GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 76/Lab./AIL/J/2013, dated 22nd May 2013)*

NOTIFICATION

Whereas, an award in I.D.No. 45/2012, dated 29-11-2012 of the Labour Court Puducherry in respect of the industrial dispute between the Vinayaga Mission Medical College and Hospital, Karaikal and its workman Thiru A. Alex Britto, over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms.No. 20/91/Lab./L, dated 23-5-91, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

S. Thammu Ganapathy,
Under Secretary to Government (Labour).

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BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. Mohandass, M.A., M.L.,
Presiding Officer, Labour Court.

Thursday, the 29th day of November 2012.

I.D. No. 45/2012

A. Alex Britto . . Petitioner

Versus

The Management,
Vinayaga Mission Medical College and Hospital,
Keezhakasakudymedu,
Karaikal . . Respondent

This industrial dispute coming on 28-11-2012 for final hearing before me in the presence of Thiru. P. Muthukrishnan, Advocate for the petitioner, Thiru R. Ilanchezhian, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this Court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Puducherry, *vide* G.O. Rt. No. 69/AIL/Lab./J/2009, dated 14-5-2009 of the Labour Department, Puducherry to resolve the following dispute between the petitioner and the respondent, *viz.*,

(1) Whether the dispute raised by Thiru A. Alex Britto against the management of M/s. Vinayaga Mission Medical College and Hospital, Keezhakasakudymedu, Karaikal, over non-employment is justified or not?

(2) If justified, what relief the petitioner is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner, in his claim statement, has averred as follows:

The petitioner was appointed as Watchman in the respondent management on 22-11-1999 on consolidated basis and his services were regularised on 5-6-2002. He was discharging his duty to the satisfaction of the respondent management. On 8-8-2005 he was orally informed that he was transferred to the respondent hospital from Stores Department and there is no written order given to him. When he demanded the written order, the respondent management refused to issue the same. Hence, he did not report for duty to the transferred place. In the attendance register, absent mark was made in red ink against his name and he was not permitted to sign in the attendance register. The petitioner approached the Vice-Principal and on giving permission by him, the petitioner was permitted to sign in the attendance register. In the above circumstances, in the transferred place, the absent mark was made against his name in the attendance register. Then on 20-8-2008 the petitioner was issued with a show cause notice stating that he refused to receive the transfer order and he did not report for duty in the transferred place. The petitioner sent a reply for the said show cause notice. Not satisfying with the reply given by the petitioner, he was suspended by the respondent management. Then the Enquiry Officer was appointed. But without conducting the enquiry, the respondent management sent a show cause notice stating that the enquiry was completed on 3-7-2008 and asked for his explanation. Without accepting the explanation given by the petitioner, he was terminated from service on 17-11-2008. Hence, he raised a dispute before the Conciliation Officer and since the conciliation ended in failure, the dispute was referred to this court.

3. In the counter statement, the respondent has stated as follows:

On 8-8-2005 the petitioner was transferred to the hospital of the respondent, which is situated in the same complex. But the petitioner refused to receive the said transfer order. But the petitioner went to the transferred place and signed in the attendance register without working. When the employees of the respondent asked for the same, the petitioner scolded them and also threatened them with the help of outsiders. Hence a show cause notice was issued to the petitioner and the enquiry was conducted. But the petitioner criticised the Enquiry

Officer and the employees of the respondent management. Even after giving sufficient opportunity to the petitioner, he has not utilised the same and dragged on the enquiry proceedings. Under these circumstances, the petitioner was terminated from service on 17-11-2008. Hence, they pray for dismissal of the industrial dispute.

4. On the side of the petitioner, PW.1 was examined and Ex.P1 to Ex.P21 were marked. On the side of the respondent, RW.1 was examined and Ex.R1 to Ex.R43 were marked.

5. *The point for determination is:*

Whether the industrial dispute can be allowed?

6. *On the point:*

The contention of the petitioner is that he was working as Watchman in the respondent hospital and on 8-8-2005 he was orally informed that he was transferred to the respondent hospital from Stores Department and there is no written order given to him and when he demanded the written order, the respondent management refused to issue the same and hence, he did not report for duty to the transferred place. In order to prove his claim, the petitioner examined himself as PW.1 and marked Ex.P1 to Ex.P21.

7. *Per contra,* the contention of the respondent is that on 8-8-2005 the petitioner was transferred to the hospital of the respondent, which is situated in the same complex, but the petitioner refused to receive the said transfer order and apart from the petitioner, six other employees have been transferred in the said transfer order.

8. In order to prove his claim, though there is no oral evidence adduced, the respondent has marked the copy of the Transfer Order as Ex.R7. As per Ex.R7, the petitioner has been transferred to the hospital of the respondent and six other employees have also been transferred to the various places of the respondent unit. Further it has been mentioned in Ex.R7 that the petitioner has refused to receive the order. Hence, the respondent has proved that they have issued a transfer order to the petitioner, which was refused by him. In the above circumstances, the contention of the petitioner is that since he has not been issued with the transfer order, he did not report duty to the transferred place cannot be accepted.

9. The learned counsel for the respondent would submit that the petitioner has failed to follow the instructions as per the display made in the notice-board about his transfer issued to him and he not only disobeyed the office instructions, but continued to sign in the attendance register against his name, where his absence in duty was marked in red ink by the supervisory authorities of the checking of the attendance marking by various staff of respondent hospital.

10. On perusal of records, it is seen that the petitioner has deliberately refused to receive and acknowledge his transfer order issued to him and he started to address the administration asking clarifications on the text of the letters addressed to him obstructing to attend enquiry and the related procedures of disciplinary enquiry. Inspite of his delayed tactics to assist the process of enquiry, he submitted that he was not disobedient by his act of refusal of his transfer orders issued to him.

11. The transfer order to the petitioner was issued in August 2005. The petitioner has replied in one reply that his transfer order notified in the notice-board could not be seen, since the notice-board was destroyed by the tsunami floods. In this regard, the learned counsel for the respondent has submitted that the tsunami affecting the buildings occurred in December 2004 and by August 2005 the notice-board was re-erected and the transfer order was also communicated in the notice-board. This version of learned counsel for the respondent has not been denied by the petitioner. The petitioner in his evidence has stated that as a Watchman, he need not look into the notice-board, which cannot be accepted, since the notice-board is fixed in each and every office and factory premises in order to communicate the day-to-day affairs to the workers/ staff. Hence, the said statement of the petitioner would show his old behaviour and the abuse of his position towards the management instructions. Hence, the statement of the petitioner that the respondent has not issued the original orders of transfer order for the compliance is untrue. Further nowadays in all the companies, the computer is set up and the original copies of any office instructions prepared as a computer print out and is generated into number of copies by photocopy only. Hence, the petitioner cannot say that since the original transfer order has not been issued to him, he refused to receive the copy of the order. Hence, the action of refusal to receive the transfer order by the petitioner not only shows the disobedience, but also the insubordinate behaviour of the petitioner towards the superior cadre of staff of the respondent institution.

12. The learned counsel for the respondent has also submitted that the petitioner has put his initials in the attendance register, when the column against his name and the date(s) during which he was unauthorised absent and the same was marked with 'red ink' thereby forging the official records of the administrative matter and thereby attempt made for aiming of wages for the unauthorised days of duty and absence.

13. In this regard, the petitioner has stated in his evidence that the Vice-Principal of the respondent institution has orally instructed to sign in the attendance register inspite of the red marking already recorded for the unauthorised absence from duty by him. He also deposed that with the permission of the Vice-Principal given orally to him only, he has signed in the attendance register. But the said Vice-Principal during the enquiry has stated that no such oral instructions were given as alleged by the petitioner. Further the learned counsel for the respondent has submitted that the statement

of the office staff in-charge of the attendance supervision and maintenance by name M. Usharani dated 8-6-2005 shows that she had marked 'A' of the petitioner, who was an unauthorised absence in duty. Hence, it is the duty of the petitioner to prove that the said Vice-Principal has given permission to sign in the attendance register. Mere oral evidence is not in any way helpful to his defence.

14. The learned counsel for the respondent has submitted that in a letter addressed by some of the office staff namely Santosh Kumar and Ramesh dated 1-10-2005 and addressed to Dean of the respondent institution, all have submitted about the indirect remarks of threatening nature passed by the petitioner. He further submitted that in a letter dated 17-8-2005 the office establishment staff have submitted that signing was identified over the already marked 'A' in red ink and asked for the same why he has signed on the already marked attendance and the petitioner threatened the staff of undue consequences. But the said persons have not been examined as witnesses during the course of enquiry. In fact the enquiry has not been conducted in a fair and proper manner.

15. A perusal of records would reveal that one Soundarapandian was appointed as Enquiry Officer and the date of enquiry was fixed on 15-6-2006. On 15-6-2006 the petitioner participated in the enquiry and gave his answer for the charges framed against him and the same were recorded. Then the office order dated 7-8-2006 was issued to the petitioner appointing one Dr. Rajaram as Enquiry Officer. But there is no record filed by the respondent to prove that the said Rajaram continued the enquiry and gave his findings. The respondent then sent a show cause notice dated 9-4-2008 to the petitioner calling for his explanation on the findings of the said Enquiry Officer Rajaram and sent the termination order dated 17-11-2008 to him. As there is no evidence produced to prove that the said Rajaram continued the enquiry and gave findings, the order of termination sent by the respondent to the petitioner cannot be accepted.

16. The respondent framed five charges against the petitioner, out which, the petitioner has admitted the first charge that he refused to accept the transfer order issued to him. As far as the other four charges, it is the duty of the respondent to prove the same by conducting the enquiry in a fair and proper manner. But as already stated, the respondent has not conducted the enquiry by following the principles of natural justice. In the above circumstances, this court has come to the conclusion that the respondent has failed to establish the other four charges framed against the petitioner.

17. Now this court has to see whether the punishment imposed by the respondent for the misconduct of refusing to receive the transfer order by the petitioner is disproportionate or not. According to the petitioner, since the respondent has issued the copy of the transfer order, he refused to receive the same and demanded the original order. Though the refusal of transfer order would amount to insubordination, this is not a serious misconduct. Hence, the punishment of termination from service is disproportionate one and the same is liable to be set aside.

18. The learned counsel for the respondent has submitted that instead of attending the enquiry to be conducted on 29-9-2005 by the then Enquiry Officer duly appointed by the respondent management, the petitioner has raised irrelevant questions and has passed filthy remarks through his letter dated 30-9-2005 and has tried his level best to avoid the attending of the enquiry. He further submitted that inspite of settlement to be done before the Labour Officer regarding the delay of disbursement of salary, as alleged by the petitioner for the month of June 2005 and July 2005, the petitioner after sending a complaint to the Labour Officer has lodged and declared a 'Continuous Fast' before the Office of the District Collector of Karaikal on 19-9-2005 and has displayed banner over a fence before the Office of the District Collector of Karaikal and when the enquiry process was in progress, the act of the petitioner displaying a banner of fast is not only the act of non-assisting of the enquiry process, but also a shear misbehaviour in public life.

19. On the side of the respondent, the letter sent to the Inspector of Police, Town Police, Karaikal with photo was marked as Ex.R19, which proves that the petitioner conducted a fasting, which was informed to the police with a request to remove the banner. The learned counsel for the respondent has submitted that since the management apprehended unsafely due to the serious misconducts of the petitioner, the respondent has lost confidence on the petitioner, as the act of the petitioner is detrimental to the discipline and security of the establishment. Therefore, the above situation created a ground for loss of confidence and hence this court feels that the petitioner has lost the right of reinstatement in this case. It is pertinent to refer the following decision which is relevant to this case.

2001 3 CLR Page 592

"Substantial contention on the merits of the case by the employer in these appeals is that the finding of loss of confidence in the employee by the Labour Court has been reversed in appeal by the Industrial Court on unreasonable grounds. What must be pleaded and proved to invoke the aforesaid principle is that (i) the workman is holding a position of trust and confidence; (ii) by abusing such position, he commits acts which results in forfeiting the same; and (iii) to continue him in service would be embarrassing and inconvenient to the employer or would be detrimental to the discipline or security of the establishment. All these three aspects must be present to refuse reinstatement on ground of loss of confidence. Loss of confidence cannot be subjective based upon the mind of the management objective facts which would lead

to a definite inference of apprehension in the mind of the management regarding trust-worthiness or reliability of the employee must be alleged and proved. Else, the right or reinstatement ordinarily available to the employee will be lost".

There was misunderstanding between the petitioner and the respondent management and in the above circumstances, if any order passed by this court to reinstate him into service, there will not be any smooth relationship between them. Hence, I feel that instead of reinstate him into service, he can be given monetary compensation. There is no dispute that the petitioner was working in the respondent company for more than six years and considering the age and the services rendered in the respondent company, a sum of ₹40,000 is awarded to the petitioner towards monetary compensation.

20. In the result, the industrial dispute is partly allowed and the petitioner is not entitled for reinstatement. However, he is entitled for monetary compensation of ₹ 40,000 (Rupees forty thousand only) and the respondent is hereby directed to pay a sum of ₹ 40,000 (Rupees forty thousand only) towards monetary compensation. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 29th day of November, 2012.

T. MOHANDASS,,
Presiding Officer,
Labour Court, Puducherry.

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List of witness examined for the petitioner:

PW.1—27-6-2011 Alex Britto

List of witness examined for the respondent: Nil

List of exhibits marked for the petitioner:

Ex.P1 — Copy of the show cause notice issued to the petitioner, dated 20-8-2005.

Ex.P2 — Copy of the letter sent by the petitioner to the respondent, dated 21-8-2005.

Ex.P3 — Copy of the suspension order, dated 26-8-2005

Ex.P4 — Copy of the letter, dated23-9-2005 sent to the petitioner informing about conduct of domestic enquiry.

Ex.P5 — Copy of the statement of petitioner in the domestic enquiry, dated 6-10-2005.

Ex.P6 — Copy of the letter, dated18-11-2005 sent to the petitioner.

Ex.P7 — Copy of the questionaire to the petitioner

Ex.P8 — Copy of the letter, dated 26-5-2006 sent to the petitioner informing about enquiry.

Ex.P9 — Copy of the enquiry proceedings

Ex.P10 — Copy of the office order, dated 7-8-2006

Ex.P11 — Copy of the show cause notice, dated 2-5-2008 sent to the petitioner.

Ex.P12 — Returned cover

Ex.P13 — Copy of the reply, dated 22-5-2008 sent by the petitioner to the respondent.

Ex.P14 — Copy of the letter, dated 3-7-2008 sent by the respondent to petitioner.

Ex.P15 — Copy of the reply, dated 11-7-2008 for Ex.P14 sent by the petitioner.

Ex.P16 — Copy of the memorandum, dated 19-8-2008 with enquiry report.

Ex.P17 — Copy of the reply, dated 6-9-2008 sent by the petitioner.

Ex.P18 — Copy of the memorandum, dated 3-11-2008 sent by the respondent.

Ex.P19 — Copy of the letter, dated 8-11-2008 sent by the petitioner to respondent.

Ex.P20 — Copy of the termination order, dated 17-11-2008 issued to petitioner.

Ex.P21 — Copy of the letter dated 21-11-2008 sent by the petitioner.

List of exhibits marked for the respondent:

Ex.R1 — Letter from the petitioner, dated 16-7-2005 complaining about Usharani.

Ex.R2 — Letter dated 18-7-2005 explaining the reason for unauthorised absent by the petitioner.

Ex.R3 — Letter from the petitioner, dated 18-7-2005

Ex.R4 — Joining report of the petitioner, dated 27-7-2005

Ex.R5 — Letter dated 5-8-2005 from the petitioner

Ex.R6 — Explanation, dated 8-8-2005 regarding leave by the petitioner.

Ex.R7 — Transfer order of the petitioner dated 8-8-2005

Ex.R8 — Letter, dated 11-8-2005 from the petitioner

Ex.R9 — Memo for enquiry, dated 13-8-2005

Ex.R10 — Letter, dated 14-8-2005 on the memo given to the petitioner.

Ex.R11—Complaint against petitioner by Usharani, dated 17-8-2005.

Ex.R12 — Complaint against petitioner from establishment section ,dated 17-8-2005.

Ex.R13 — Copy of the attendance register

Ex.R14 — Formal enquiry proceedings, dated 19-8-2005

Ex.R15 — Show cause notice, dated 20-8-2005 given to the petitioner.

Ex.R16 — Reply dated 21-8-2005 to the show cause notice

Ex.R17 — Letter, dated 21-8-2005 from the petitioner

Ex.R18 — Copy of suspension order, dated 26-8-2005

Ex.R19 — Copy of complaint to the Inspector of Police, dated 19-9-2005

Ex.R20 — Copy of letter appointing Enquiry Officer, dated 23-9-2005.

Ex.R21 — Copy of call letter to the petitioner, dated 23-9-2005.

Ex.R22 — Letter to the respondent by the petitioner, dated 26-9-2005 .

Ex.R23 — Copy of the call letter to the petitioner, dated 28-9-2005.

Ex.R24 — Complaint from the employees about the petitioner, dated 30-9-2005.

Ex.R25 — Letter from the petitioner, dated 30-9-2005

Ex.R26 — Deposition by the petitioner in the enquiry proceedings.

Ex.R27 — Call letter for enquiry, dated 18-11-2005

Ex.R28 — Deposition by the petitioner in the enquiry proceedings.

Ex.R29 — Copy of enquiry report

Ex.R30 — Intimation to the petitioner for final enquiry, dated 6-5-2006.

Ex.R31 — Deposition of Usharani

Ex.R32 — Deposition of the petitioner in the enquiry proceedings.

Ex.R33 — Statement of Arunprasath

Ex.R34 — Intimation regarding charge of Enquiry Officer

Ex.R35 — Questionaire to the witness Sethumadhavan

Ex.R36 — Disciplinary enquiry, report dated 8-2-2007

Ex.R37 — Copy of the show cause notice, dated 9-4-2008

Ex.R38 — Reminder letter, dated 3-7-2008 to the petitioner

Ex.R39 — Reply by the petitioner, dated 15-7-2008

Ex.R40 — Letter to the petitioner dated 19-8-2008

Ex.R41 — Letter dated 6-9-2008 by the petitioner

Ex.R42 — Letter to the petitioner dated 3-11-2008

Ex.R43 — Copy of termination order, dated 17-11-2008

T. MOHANDASS,
II Additional District Judge,
Presiding Officer,
Labour Court, Puducherry.

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 77/Lab./AIL/J/2013, dated 22nd May 2013)

NOTIFICATION

Whereas, an award in I.D. No. 4/2012, dated 30-11-2012 of the Labour Court, Puducherry in respect of the industrial dispute between the Managing Director, M/s. Hindustan Unilever Limited, Detergent Factory, Puducherry and its workman Thiru A. Elango, Valavanur over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G. O. Ms. No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
Presiding Officer, Labour Court

Friday, the 30th day of November 2012

I.D. No. 4/2012

Elango, S/o. Annamalai,
Valavanur. .. Petitioner

Versus

The Managing Director,
Hindustan Unilever Limited,
Detergent Factory, Puducherry. .. Respondent

This industrial dispute coming on 26-11-2012 for final hearing before me in the presence of Thiru R.T. Shankar, Advocate for the petitioner, Tvl. L. Sathish and D. Dayanithi, Advocates for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following :

AWARD

The petitioner has filed a case before the Conciliation Officer as against the dismissal order passed by the respondent and since the said case has not been

disposed off within 45 days, this industrial dispute is filed by the petitioner before this court under section 2 A of Industrial Disputes (Amendment) Act, 2010 (24 of 2010).

2. The petitioner, in his claim statement, has averred as follows:

The petitioner was working as permanent employee in the respondent company from 4-3-1998 and he was a member in the Hindustan Unilever Employees Union.

The respondent raised a false allegation against the petitioner that from 1-7-2009 to 18-2-2010 he has taken leave without approval from the management and the enquiry was conducted, for which, the H.R. Manager was appointed as Enquiry Officer. The Enquiry Officer has not conducted the enquiry in a fair manner and had acted as management representative and had conducted the enquiry in biased manner. Further in the enquiry, the petitioner was threatened to accept the charges in writing by the Enquiry Officer. In the enquiry, the Enquiry Officer had refused to give sufficient opportunity to the petitioner and had refused to mark even a single document on the part of the petitioner. The petitioner was also not permitted to examine even a single witness on his side. Based on the report of the Enquiry Officer, the petitioner was dismissed from service from 17-3-2011. The dismissal of the petitioner is in violation of principles of natural justice and contrary to the provisions of Industrial Disputes Act.

Further on the date when he was terminated, two conciliation proceedings concerning him were pending before the Conciliation Officer. Hence, the respondent management has not followed section 33(2)(b) of Industrial Disputes Act. In the above circumstances, the present industrial disputes is filed for his reinstatement along with other benefits.

3. In the counter statement, the respondent has stated as follows:-

The petitioner was employed as general worker with effect from 4-3-1998. The petitioner was a chronic absentee taking leave without authorisation. The petitioner continued to be erratic in his attendance and remained unauthorisedly absent on various dates from 1-7-2009 onwards. When the petitioner did not turn up for employment till 18-2-2010, the respondent issued a detailed charge sheet, which was received by the petitioner, but no reply was sent by him. Then the enquiry was conducted and in the enquiry proceedings, the petitioner categorically admitted the fact that he had remained unauthorisedly absent from July 2010 onwards. The Enquiry Officer submitted his detailed report on 18-8-2010 by coming to the conclusion that the petitioner was guilty of the charges levelled against him. The respondent immediately issued a second show cause notice along with the enquiry report to the petitioner on 11-1-2011, which returned unserved with an endorsement "not claimed". The respondent published the second show cause notice in Thina Thanthi. The petitioner did not respond to such publication. Then the petitioner was issued the termination order on 17-3-2011, which was not received by the petitioner. The said order was published in Thina Thanthi Tamil daily on 6-5-2011. The petitioner was removed from the services for a grave misconduct of chronic habitual absenteeism, which was admitted by him in an independent and impartial domestic enquiry. Hence, the dismissal of the petitioner from service is fully justified. Therefore, the respondent prays for dismissal of the industrial disputes.

4. On the side of the petitioner, PW.1 and PW.2 were examined and Ex.P1 to Ex.P4 were marked. On the side of the respondent, RW.1 was examined and Ex.R1 to Ex.R13 were marked.

5. *The point for determination is:*

Whether the petitioner can be considered for reinstatement in service with accrued benefits?

6. *On the point:*

According to the petitioner, he was working as permanent employee in the respondent company from 4-3-1998 and the respondent raised a false allegation against him that from 1-7-2009 to 18-2-2010 he has taken leave without approval from the management and the enquiry was conducted, for which, the H.R. Manager was appointed as Enquiry Officer and the Enquiry Officer has not conducted the enquiry in a fair manner and had acted as management representative and had conducted the enquiry in biased manner and in the enquiry, he was threatened to accept the charges in writing by the Enquiry Officer. In order to prove his contention, the petitioner was examined as PW1.

7. *Per contra,* the contention of the respondent is that the petitioner was a chronic absentee taking leave without authorisation and he continued to be erratic in his attendance and remained unauthorisedly absent on various dates *i.e.*, 54.5 days in 2002, 74 days in 2004, 61.5 days from January 2005 to August 2005, 23 days from January 2006 to April 2006, 146.5 days from Janaury 2008 to December 2008 and 148 days from January 2009 to June 2009 and hence they issued a detailed charge sheet, which was received by the petitioner and then the enquiry was conducted and in the enquiry proceedings, the petitioner categorically admitted the fact that he had remained unauthorisedly

absent from July 2010 onwards and based on the report of the Enquiry Officer, he was dismissed from service. In order to prove his contention, the H.R. Executive was examined as RW1.

8. In order to prove his claim, RW1 has marked the copy of the attendance record for the period from January 2007 to March 2011 as Ex.R12 and the computerised statement of overall percentage of authorised and unauthorised absenteeism from January 2006 to December 2012 as Ex.R13. A perusal of Ex.R13 reveals that the percentage of unauthorised absenteeism as on December 2012 is 26.49%. RW1 has also marked the copy of the letters sent by the petitioner as Ex.R2 and Ex.R3. A perusal of Ex.R2 reveals that the petitioner has admitted the unauthorised absent. In Ex.R2, the petitioner has also stated that due to jaundice, he could not report for duty. In Ex.R3 the petitioner has admitted that due to mental torture and family circumstances, he could not report for duty and he will attend the duty promptly in future. Ex.R2 and Ex.R3 have been marked on objection by the petitioner. Though the petitioner has objected those documents under Ex.R2 and Ex.R3, in the enquiry proceedings under Ex.R4, the petitioner has admitted the unauthorised absent and stated that he could not report for duty due to family circumstances. The petitioner has not challenged the same in the enquiry, which is proved through enquiry proceedings under Ex.R4. In the above circumstances, the respondent has proved that the petitioner was unauthorised absent for the period mentioned in the charge sheet.

9. The contention of the learned counsel for the petitioner is that the petitioner has been working under the respondent company for the past 13 years, but in the enquiry proceedings, without giving sufficient opportunity, the respondent has closed the entire enquiry proceedings within two hours and therefore with intention to victimise the petitioner, the respondent management has been acted against the petitioner and hence, the enquiry was not conducted fair and proper manner.

10. On the other hand, the contention of the learned counsel for the respondent is that the enquiry was conducted in a free and fair manner by giving full opportunity to the petitioner to disprove the charges and there is absolutely no lacuna in the enquiry proceedings and it has been conducted in a free and fair manner after following all the requisite principles of natural justice. He further submitted that the petitioner during the enquiry proceedings admitted the charges and based on his admission, the petitioner was found guilty of the charges.

11. RW.1 has marked the copy of the enquiry proceedings as Ex.R4. On perusal of Ex.R4, it is seen that the entire proceedings beginning with charge-sheeting the petitioner to issuing 2nd show cause notice to the petitioner were done in Tamil, the Enquiry Officer explained the entire proceedings in detail to the petitioner in Tamil, the Enquiry Officer offered permission to the petitioner to engage defense assistance of his choice and in the enquiry proceedings, the petitioner has categorically admitted the fact he had remained unauthorisedly absent, as stated in the charge sheet and then the petitioner himself requested the Enquiry Officer to close the enquiry after recording his admission and the petitioner signed in the enquiry proceedings to that effect. Finally the petitioner was found guilty of the charges and based on the enquiry report, the second show cause notice was issued under Ex.R6, which was not claimed by the petitioner and then after effecting paper publication of the second show cause notice, the dismissal order under Ex.R9 was sent to the petitioner.

12. The learned counsel for the petitioner has submitted that in the enquiry proceedings, the H.R. Executive had prepared all the charges and commanded and demanded this petitioner to obtain his signature over the same, such act is absolutely illegal and violation of principles of natural justice.

13. But the petitioner has not produced any evidence to show that his signature was obtained in the enquiry proceedings forcibly. Further before conducting the enquiry, the petitioner has sent letters under Ex.R2 and Ex.R3 to the respondent admitting his unauthorised absence and prayed for leniency. In the above circumstances, the said version is only an after-thought, which cannot be accepted.

14. The contention of the learned counsel for the petitioner is that the general procedure at the enquiry would normally be the appointment of Enquiry Officer has to be informed to the petitioner by the respondent management but the respondent management neither inform nor appoint any Enquiry Officer for conducting the enquiry, but the H.R. Executive himself acted as an Enquiry Officer and conducted the domestic enquiry without following the principles of natural justice.

15. It is true that the H.R.Executive of the respondent management was acted as Enquiry Officer. When the petitioner himself admitted the charges framed against him, this court need not see the other aspects. Hence, there is nothing wrong in conducting the domestic enquiry by the H.R.Executive of the respondent management.

16. The further contention of learned counsel for the petitioner is that the respondent had not followed section 33(2)(b) of Industrial Disputes Act, 1947 and

had dismissed the petitioner unlawfully and as per the said section, the employer may pass an order of dismissal or discharge and at the same time make an application for approval of the action taken by him and if the approval is not granted under section 33 (2)(b) of Industrial Disputes Act, 1947, the order of the dismissal becomes ineffective from the date it was passed and failure to make application under the said section would render the order of dismissal inoperative. In order to support his claim, he relied upon the following decision:

2002(1) L.L.N. 639:

Jaipur Zila Sahakari Bhoomi Vikas Bank Limited Versus Ram Goal Sharma and Others:-

"Industrial Dispute Act 1947, 33(2)(b), Proviso (as amended in 1956) - If approval is not granted under section 33(2)(b) or failure to make application under 33(2)(b) seeking approval, renders order of dismissal inoperative -Dismissal becomes ineffective from date it was passed -Employee becomes entitled to wages from date of dismissal."

17. The learned counsel for the petitioner further submitted that at the time of termination of the petitioner, the dispute raised by his union, was pending before the Conciliation Officer and hence he claims that the dispute is to be pending and the procedure contemplated under section 33(2)(b) of Industrial Disputes Act.

18. In order to support the said claim, PW.1 has marked the copy of the dispute raised by Hindustan Lever Wel's Union before the Conciliation Officer as Ex.P2. As per Ex,P2, a dispute was pending before the Conciliation Officer with regard to declaration of paid holidays in violation of 12(3) settlement.

19. The learned counsel for the respondent has submitted that the petitioner is no nexus connection with the dispute which is pending before the Conciliation Officer and the industrial disputes was raised individual capacity of the petitioner under section 2 A of Industrial Disputes Act. The learned counsel for the respondent has further submitted that the petitioner has never pleaded and proved as to what was the dispute that was involved to the conciliation and how the petitioner is connected to the said dispute. He further submitted that the dispute raised in the previous conciliation proceedings by Hindustan Unilever Wel's Union had absolutely no nexus or connection with the petitioner. In order to support his claim, he relied upon the following decisions:-

CDJ 1962 SC 016:

Digwadih Colliery Versus Ramji Singh:

"The respondent's case set out in this application appears to be that because there was Reference No. 60 of 1959 pending between the appellant and some of its employees, section 33(2) applied, but, unless it is known as to what was the nature of the dispute pending in the said reference, it would plainly be impossible to decide whether the respondent is a workman concerned within the meaning of section 33(2). In his application, the respondent has made no averment about the nature of the said dispute; and so the tribunal was clearly in error in holding that the broad construction of section 33(2) automatically led to, the conclusion that the respondent was the workman concerned and could, therefore, claim the protection of section 33(2)."

1992 I.L.L.J. 837 Madras:

Rajagopal and Others Versus EDI Party Limited and another:

"10. In the instant case, even assuming that the first petitioner was a member of the union which had sponsored the dispute, the first petitioner was not bound by the award that was passed; nor was he directly connected with the dispute already pending before the Labour Court. In view of the aforesaid reasoning that the first petitioner cannot be construed as the workman concerned and if the first petitioner happened to be the workman not concerned with the dispute for the reasons stated above, there was no need for the employer to seek permission as contemplated under section 33(2)(b) of the Act. Simply because the first petitioner happened to be the member of the union, which sponsored the dispute, the petitioner cannot claim that he is a workman concerned with reference to the dispute which was then pending unless there is some other common feature in the disputes which were pending and the claim of the petitioner."

20. It is true that the present industrial dispute was filed by the individual name of the petitioner. If the conciliation has not been completed within 45 days, the individual can file the claim statement directly before the Labour Court as per amended section 2-A of industrial disputes Act, 1947. Accordingly, the petitioner has filed the present industrial disputesbefore this court. Hence, I find nothing wrong in filing the present industrial dispute by the petitioner individually.

21. The learned counsel for the respondent himself has admitted that there were two conciliation proceedings pending at the time of termination of the petitioner, but his only defence is that the disputes raised in the previous conciliation proceedings by the union had absolutely no nexus or connection with the petitioner.

22. In this regard, the learned counsel for the petitioner has submitted that the dispute was raised for charter of demands in I. D. No.1065/2008/LO(C)/AIL and

the another dispute was raised for changing of service condition, since the respondent management without giving 9-A notice to the union changed their service condition including the petitioner herein in I.D. No.1458/ 2009/LOC/AIL In order to prove the same, PW.1 has marked the copy of the notice of enquiry sent to the respondent management as Ex.P4. The petitioner has not proved that he is a member of Hindustan Lever Employees Union. Hence, Ex.3 would not support the case of the petitioner. In the above circumstances, when the Conciliation Officer has conducted the conciliation in respect of the issues with regard to the service conditions of the employees and charter of demands pertaining to the respondent management, this court has to see whether approval under section 33(2)(b) of Industrial Disputes Act in this case is legally required or not. Eventhough the petitioner is an employee under the respondent management, he has not proved that he is a member in Hindustan Unilever Employees' Union, who has raised the said issues. Hence, Section 33(2)(b) of Industrial Disputes Act is not applicable to the petitioner, as such the respondent management has rightly decided that they need not pay the wages for one month and need not file an application to the authority before which the proceeding is pending for approval of the action taken by them.

23. The learned counsel for the respondent submitted that the issue of chronic absenteeism has become a very serious issue in the respondent's factory, crippling its production and productivity and disturbing its work schedules and man power allotment and the high percentage of unauthorised absenteeism clearly indicates that workers are taking their employment casually and the leniency shown by the respondent in the- past in not taking stringent disciplinary action was also an encouraging factor; The learned counsel for the respondent relied upon the following decisions to support his claim:-

CDJ 2009 SC1194:

Union of India and Others Versus BishamberDas Dogra:-

"Admittedly, the respondent employee has not completed the service of six years and had been imposed punishment three times for remaining absent from duty. On the fourth occasion when he remained absent for 10 days without leave, the disciplinary proceedings were initiated against him... ...

There is nothing on record to show any explanation for such repeated misconduct or absenteeism. The court/tribunal must keep in mind that such indiscipline is intolerable so far as the disciplined force is concerned. The respondent was a guard in CISF. No attempt had ever been made at any stage by the respondent - employee to explain as to what prejudice has been caused to him by non-furnishing of the enquiry report.

... ... Appeal filed by the respondent employee was decided by the statutory appellate authority giving cogent reasons. The facts of the case did not present special features warranting any interference by the court in limited exercise of its powers of judicial review. In such a fact situation, we are of the view that the High Court should not have interfered with the punishment order passed by the disciplinary authority on such technicalities."

CDJ 2007 MHC 3398:-

G. Vijayan Versus The Presiding Officer, Labour Court, Salem and Another:-

"This is a classic instance wherein misplaced sympathy has been shown by the Labour Court, having found that the domestic enquiry was conducted in a fair manner. This practice of showing misplaced sympathy or generosity or compassionate ground to review the quantum of punishment is held to be impermissible by hierarchy of judgments of the apex court. It is also clear that the apex court has held that only in cases where the punishment awarded is shockingly disproportionate to the charge proved, the court can interfere to reduce the punishment. ... ... The award of the Labour in ordering reinstatement of the appellant with service benefits, however, without back wages is not on proper and sound reasoning as found by the learned single Judge. In view of the same, the writ appeal fails and the same is dismissed."

2006-1-L.L.J.-55 (Madras).

O.Krishnan Versus Management of Dheeran Chinnamalai Transport Corporation:-

"In the present case, however, apart from unauthorised absence for which disciplinary proceedings were being initiated, the disciplinary authority has relied upon the fact that on previous occasions also the petitioner had remained unauthorisedly absent. The disciplinary authority had also considered the fact that there has been several other punishments imposed upon the petitioner on numerous occasions and considering all these aspects, the disciplinary authority had come to the conclusion that the person was to be dismissed. The Labour Court on independent consideration has also come to the very same conclusion and has held that punishment of dismissal was justified in the peculiar facts and circumstances of the case, in the absence of any patent illegality in such orders, it is difficult for the High Court to come to any different conclusion and to interfere with the punishment."

2010-4-L.L.J. 245:-

Indian Coffee Board Versus The Presiding Officer:-

"Not only has no evidence/document whatsoever of illness has been produced but no particulars of the serious prolonged illness, if any, suffered by the respondent No.2 workman have been stated. ... . court recently in Union of India *Versus* Bishamber Das Dogra MANU/SC/0887/2009 has reiterated that absenteeism is a gross violation of discipline. It goes without saying that such absenteeism of a workman can paralyze the working/functioning of the employer. The Labour Court ignored the facts which stated one in the face in the facts of the present case."

24. Now we have to see whether the punishment of dismissal is proportionate to the charges levelled against the petitioner for unauthorised absence. The petitioner in the disciplinary proceedings has admitted the charges and prayed leniency for the unauthorised absence. Apart from the above, according to the respondent, the petitioner was an employer under them from 4-3-1998 and he was chronic absentee from 2002 only. Prior to 2002, there was no remarks or misconduct by the petitioner. Of course the history sheet of the workman shows that the period of absence from 2002 to 2009 are very much long period of absence, which cannot be considered leniently. About eight spells of unauthorised leave taken by the petitioner were admitted by the petitioner, which were also warned in time and he was also suspended once for the unauthorised leave taken from January 2009 to June 2009 (149 days). These lapses are very serious in nature and hence considering the habit of long unauthorised absence, I feel that he cannot be reinstated into service. However, the punishment of dismissal from the service is disproportionate one, but I am of the opinion that he can be awarded the monetary compensation to him and his family members in the circumstances of the case. Hence, I feel that the monetary compensation only will be the better solution in this case to settle this disputes between the parties, which would meet the ends of justice. Considering the service of the petitioner and starving family members depending the workman for livelihood, he can be awarded a sum of ₹ 2,00,000 in *lump sum* towards compensation. Accordingly, this point is answered.

25. In the result, the industrial dispute is partly allowed and the petitioner is not entitled for reinstatement and the other benefits. However, he is entitled for ₹ 2,00,000 (Rupees two lakhs only) towards monetary compensation. No costs. Time for three months.

Typed to my dictation, corrected and pronounced by me in the open court on this 30th day of November, 2012.

T. MOHANDASS,
Presiding Officer, Labour Court,
Puducherry.

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List of witnesses examined for the petitioner :

PW.1 — 28-9-2012 — A. Ilango

PW.2 — 12-10-2012 — Ezhumalai

List of witnesses examined for the respondent :

RW.1 — 25-10-2012 Arokia Berdila Anand

List of exhibits marked for the petitioner :

Ex.P1 — Copy of the dismissal order, dated 17-3-2011

Ex.P2 — Copy of the dispute raised by the Hindustan Lever Wel's Union, dated 22-10-2010.

Ex.P3 — Copy of the dispute before the Conciliation Officer, dated 8-11-2011.

Ex.P4 — Copy of the enquiry notice, dated 6-12-2011 sent to the respondent.

List of exhibits marked for the respondent :

Ex.R1 — Authorisation letter, dated 24-10-2012.

Ex.R2 — Copy of the letter given by the petitioner admitting his unauthorised absent, dated 4-9-2009.

Ex.R3 — Copy of the letter given by the petitioner admitting his unauthorised absent to the respondent dated 23-10-2009.

Ex.R4 — Domestic enquiry proceedings

Ex.R5 — Copy of the enquiry report in Tamil.

Ex.R6 — Copy of the second show cause notice, dated 11-1-2011.

Ex.R7 — Copy of the returned postal cover, dated 12-1-2011.

Ex.R8 — Copy of the paper publication, dated 30-1-2011.

Ex.R9 — Copy of the termination order, dated 17-3-2011.

Ex.R10— Returned postal cover.

Ex.R11— Copy of the paper publication, dated 6-5-2011.

Ex.R12— Copy of the extract of computerised muster roll.

Ex.R13— Computerised statement of overall percentage of authorised and unauthorised absenteeism.

T. MOHANDASS,
Presiding Officer, Labour Court,
Puducherry.

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 78/Lab./AIL/J/2013, dated 22nd May 2013)*

NOTIFICATION

Whereas, an award in I.D. No. 22/2007, dated 18-1-2013 of the Labour Court, Puducherry in respect of the industrial dispute between the Managing Director, Chemfab Alkalis Limited, Puducherry and its workman Thiru D. Alwin Maria Susai over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

S. Thammu Ganapathy,
Under Secretary to Government (Labour).

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BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. Mohandass, m.a., m.l.,
Presiding Officer, Labour Court.

Friday, the 18th day of January 2013

I.D. No. 22/2007

D. Alwin Maria Susai . . Petitioner

Versus

The Managing Director,
M/s. Chemfab Alkalis Limited,
Puducherry. . . Respondent

This industrial dispute coming on 5-1-2013 for final hearing before me in the presence of Thiru B. Mohandass, Advocate for the petitioner, Thiru G. Krishnan, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following :

AWARD

This industrial dispute arises out of the reference made by the Government of Puducherry, *vide* G.O. Rt. No. 87/2007/Lab./AIL/J, dated 3-4-2007 of the Labour Department, Puducherry to resolve the following dispute between the petitioner and the respondent, *viz.*

(1) Whether the dispute raised by Thiru D. Alwin Maria Susai over non-employment against the management of M/s. Chemfab Alkalis Limited, Puducherry is justified or not?

(2) To what relief, he is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed.

2. The petitioner in his petition has stated as follows:

The petitioner was appointed as a driver on casual and daily rated basis in the respondent company and subsequently he was appointed on permanent basis on 1-8-1987. The petitioner discharged his duties in a very sincere and honest manner and without any black mark. The relationship between the management and the petitioner had been cordial for long and later the attitude of the respondent towards the petitioner became hostile, consequent to the steps taken by him to form a trade union. The respondent at first developed the idea of dispensing with the services of the drivers including the petitioner and asked them to submit resignation letters and to settle their accounts with the management. Subsequently the respondent management issued a transfer order to all the members of the union, since they were not willing to submit the resignation. Accordingly, the petitioner was served with the transfer order, dated 3-6-2005, transferring him to Kanthadu village of Tindivanam T.K. Contrary to the fact that there was no unit or branch of the respondent company in that place. The petitioner reported to duty in the place of transfer on 11-6-2005. Through letter, dated 10-6-2005, the petitioner pointed out the illegal and unjustified acts of the respondent management and requested to withdraw forthwith the unlawful transfer order and it was followed by his representation, dated 22-6-2005. Further the petitioner was constrained to lodge a complaint to the Inspector of Police, Marakkanam on 24-6-2005 for the incidents referred to in the above referred letter, dated 22-6-2005 and also for other unlawful activities of the staff of M/s. Padma Chemicals with the connivance of village people and others set up by the respondent.

The General Manager (HRD) issued a charge sheet, dated 21-6-2005 to the petitioner alleging commission of misconduct. As per the said charge sheet, the petitioner was accused of instigating the employees against the management on 11-6-2005 at 1.00 p.m. and intimidated them and when the Head of Department Mr. Gurupandian instructed him not to indulge in such activities, the petitioner shouted

at him and made malicious statement against the company management. He submitted explanation, dated 25-6-2005 pointing out the necessity to recall the false charges. As the petitioner was not entrusted with duties commensurate with his status and qualification as a driver and as there was no obligation for him to work under Padma Chemicals or at the Office of the Government Salt Factory and as there was no guarantee for his life and dignity he was not in a position to report to that place for work. By way of retort, the General Manager (HRD) called upon him to report for duty immediately and threatened to take appropriate disciplinary action against him.

On 21-6-2005 a charge sheet was issued against him based on which the enquiry was conducted by the Enquiry Officer. The enquiry was not conducted in accordance with law. The enquiry was conducted in flagrant violation of the principles of natural justice and the concept of fair hearing was not respected by the Enquiry Officer. The Enquiry Officer submitted his report, dated 12-9-2005 holding the petitioner guilty of all the charges framed against him. The respondent sent second show cause notice, dated 20-9-2005 to the petitioner asking for objections to the proposed penalty of dismissal from service. The objections submitted by the petitioner for the Enquiry Officer as well as for the proposed penalty were not considered in the proper perspective and the respondent dismissed the petitioner from service.

The establishment of Padma Chemicals is not a branch of Chemfab Alkalis Limited, and the above two establishments were two independent establishments and hence for the misconduct alleged to have occurred in Padma Chemicals, the respondent management cannot take disciplinary action against the petitioner. Hence, this industrial dispute is filed by the petitioner for reinstatement and with other benefits and monetary compensation of ₹ 2 lakhs.

3. The respondent in his counter has stated as follows:

It is true that the petitioner was working in the respondent company as driver. The respondent company intended to transfer the drivers for better utilisation of their services and on administrative reasons and exigencies of work. Having come to know of the transfer which is an incident of service, the drivers, who have worked at one station throughout their service career, made a representation to the then General Manager (HRD) that they were totally fed up with the monotonous work which they were doing in the factory for a quite a long time and their dream was to own a vehicle and use it for commercial purpose which would fetch them more income and they could also concentrate on other works independently and further represented that their dreams would come true only with help of the management by paying them a *lump sum* as *ex gratia* apart from terminal benefits and if the management agree for such arrangement, though would even submit their resignation.

The management keeping in view of their long association with the management, considered the representation as *bona fide* and gave clearance to Michelraj to negotiate with the drivers to arrive at a reasonable *ex gratia* payment without laying any precondition and accordingly, he proceeded with the negotiation. The management permitted the drivers to negotiate and finally the petitioner and other drivers have agreed for the *lump sum ex gratia* payment negotiated by the management taking into consideration of their respective period of service.

The petitioner by transfer order, dated 3-6-2005 was transferred to the respondent's salt division situated at Kanthadu village, Marakkanam with immediate effect and when the transfer order was served to him in person, he has refused to receive it and the same was sent to him by a registered post with acknowledgment due. Then he received the transfer order and reported for duty on 11-6-2005. It was reported that at about 1.00 p.m. during the working hours, he instigated the employees against the management and intimidated them and when the Head of Department Thiru Gurupandian instructed him, not to indulge in such activities within the establishment during the working hours, the petitioner shouted at him and made malicious statement against the company. The preliminary enquiry was conducted to ascertain the factual position and then a charge sheet, dated 21-6-2005 was sent to the petitioner. In order to give a twist and turn to his commission of misconduct and to deviate the whole issue, the petitioner out of his own imagination, has concocted an incidence and gave a complaint, dated 24-6-2005 to the Inspector of Police, Marakkanam Police Station.

The management not satisfied with the explanation, dated 25-6-2005 submitted by the petitioner to the charges levelled against him, decided to conduct a domestic enquiry. The petitioner participated in the enquiry proceedings and cross-examined the management witnesses, but thereafter he has deliberately avoided to submit his documents and statements and made baseless

allegations against the Enquiry Officer. The Enquiry Officer submitted his report wherein he has found that the charges levelled against the petitioner have been proved. Then the management sent a show cause notice, dated 20-9-2005 regarding the proposed punishment and thereafter by notice, dated 27-9-2005 the management has terminated the services of the petitioner. A sum of ₹ 62,808 towards full and final settlement of accounts by cheque was sent to the petitioner which he has received under protest. Hence, they pray for dismissal of the industrial dispute.

4. On the side of the petitioner, PW.1 and PW.2 were examined and Exs.P1 to Ex.P13 were marked. On the side of the respondent, RW.1 and RW.2 were examined and Exs.R1 to Ex.R39 were marked.

5. *The point for consideration is :*

Whether the industrial dispute can be allowed?

6. *On this point :*

The contention of the petitioner is that he joined as driver in the respondent company on casual and daily rated basis and subsequently he was appointed on permanent basis on 1-8-1987 and he discharged his duties in a very sincere and honest manner and without any black mark and he was transferred by the respondent management to the respondent's salt division at Kanthadu Village of Tindivanam T.K. with the oblique motive of victimising him for his legitimate trade union activities. In order to prove his claim, the petitioner examined himself as PW.1. PW.1 in his evidence has deposed that the General Manager (HRD) issued a charge sheet, dated 21-6-2005 to him alleging commission of misconduct and as per the said charge sheet, he was accused of instigating the employees against the management on 11-6-2005 at 1.00 p.m. and intimidated them and when the Head of Department Mr. Gurupandian instructed him not to indulge in such activities, he shouted at him and made malicious statement against the company management and based on the said charge enquiry was conducted, but the enquiry was not conducted in accordance with law and he participated in the enquiry and then the Enquiry Officer submitted his report holding that the charges levelled against him were proved and based on the said report, the respondent terminated him from service.

7. PW.1 has marked his pay slip as Ex.P1, transfer order, dated 3-6-2005 as Ex.P2, representation, dated 10-6-2005 sent by him to the respondent for recall of transfer order as Ex.P3, charge sheet, dated 21-6-2005 as Ex.P4, representation, dated 22-6-2005 sent by him to the respondent for recall of transfer order as Ex.P5.

8. On the side of the petitioner, the ex-employee of the respondent company was examined as PW.2. PW.2 in his evidence has deposed that he was working as Assistant Manager in the respondent company and at that time, he knows the petitioner and the respondent management had decided to outsource the work of the drivers of the company to a contractor but the said proposal of the respondent company was not accepted by the petitioner. PW.2 further deposed that the petitioner was transferred to Chennai unit, where he has not been given any work and then he was terminated from service by settling his account. During the cross-examination, PW.2 has admitted that on 31-3-2010 he was forced to resign the job from the respondent company and the respondent company has not given retirement benefit amount as promised by them.

9. The respondent has admitted that the petitioner was the driver in their company, but has stated that the transfer is an incidence of service and the petitioner knows very well that the transfer order is lawful and is within the rights of the management. I agree with the contention of the respondent, as the transfer is purely on the own discretion of the employer and it is done only because of reorganising the business and also due to administrative convenience. Further PW.2 in his cross-examination has admitted that the transfer of employees in the respondent company is routine one. Hence, it is the duty of the petitioner to obey the order of his master, but he refused to receive the transfer order, which amounts to insubordination and dereliction of duty. If any inconvenience in the transferred place, the petitioner would have requested the respondent to transfer him to his native place. But the petitioner sent various letters under Ex.P3 and Ex.P5 to the respondent harshly stating that he has been transferred to salt division at Kanthadu Village to victimise him for his legitimate trade union activities. Hence, the said act of the petitioner as employee paves way to affect the entire administration of the respondent management.

10. On the side of the respondent, the authorised representative of the respondent company was examined as RW.1. RW.1 in his evidence has deposed that the management has issued a charge sheet dated 21-6-2005 for his act of instigation, wilful insubordination, gross neglect of work, disorderly and disrespectful behaviour and based on the said charge sheet, the enquiry was conducted against him.

11. The learned counsel for the petitioner has submitted that the petitioner was found fault with the commission of misconducts of 1. Instigation, 2. Intimidation, 3. Wilful insubordination, 4. Gross neglect of work, 5. Disorderly and disrespectful

behaviour and as regards the first charge of instigation is concerned, the charge sheet accused the petitioner of instigating the employee against the management on 11-6-2005 and even if the above charge is proved, it cannot be a misconduct attracting disciplinary action against the petitioner and with regard to the second charge of intimidation, it is very significant to note that the act of intimidation does not find a place in the model standing orders, thus no scope for disciplinary action against the petitioner and as for as third charge of wilful insubordination is concerned, item (a) of model standing order refers to misconduct of wilful insubordination, however the above misconduct is qualified by the terms "to any lawful and reasonable order of a superior", but the content of the charge sheet which does not make reference to any lawful and reasonable order of a superior and hence the said charge against the petitioner has to fall to the ground. The learned counsel for the petitioner further submitted that the fourth charge of gross neglect of work is not a misconduct under the model standing orders and as per item (I) of the Model Standing Order 14(3), it is only "habitual negligence or neglect of work" a misconduct warranting disciplinary action against the charged official and it is plain as day-light that it is not open to the respondent to take disciplinary action for gross neglect of work and the last charge of disorderly behaviour constitutes a misconduct as enumerated under item (h) of Model Standing Orders 14(3).

12. The learned counsel for the petitioner further submitted that the charge sheet is devoid of necessary particulars like what defamatory statements and what false statements were made by the petitioner and the names of descriptions of the officers of the respondent company against whom the petitioner has made the false/defamatory statement etc. In order to support his claim, he relied upon the following decisions:-

(2012) 2 S.C.C. (L&S) 926 :

Anil Gilurker Versus Bilaspur Raipur Kshetrita Gramin Bank:

"The charges should be specific, definite and giving details which formed basis of charges and no enquiry can be sustained on vague charges."

1984 II L.L.N. :

(Civil Appeal No.1673 of 1982 and W.P. No.4567 of 1982) Ved Prakash Gupta Versus Delton Cable India (P) Limited, Faridabad :

"The charge against the appellant, namely of using abusive language is not a serious one and it is not known how the charge, even if proved, would result in any, much less total, loss of confidence of the management in the appellant. The punishment awarded to the appellant is shockingly disproportionate regard being had to the charge framed against him. No responsible employer would ever impose in like circumstances the punishment of dismissal and victimisation and unfair labour practice could well be inferred from the conduct of the management. Appellant entitled to be reinstated with full back wages and continuity of service."

1983 I L.L.N. (Civil Appeal No. 1531 of 1980)

Rama Kant Misra Versus State of Uttar Pradesh and Others:—

"When it is said that the language discloses a threatening posture, it is the subjective conclusion of the person, who hears the language because voice modulation of each person in the society differs and indiscreet, improper, abusive language may show lack of culture but merely the use of such language on one occasion unconnected with any subsequent positive action and not preceded by any blameworthy conduct cannot permit an extreme penalty of dismissal from service. Therefore, the order of dismissal was not justified in the facts and circumstances of the case."

1998(4) L.L.N. 884 :

Management of Essorpe Mills (P) Limited, Coimbatore Versus Presiding Officer, Labour Court, Coimbatore and Another:-

"Merely because the Labour Court has found the enquiry to be fair and lawful and the findings not to be vitiated in any manner, it cannot be said that it should not have interfered with the order of termination of service of the respondent in exercise of its powers under the provisions of the Act. Once it is found that the Labour Court has exercised its discretion judicially with regard to punishment, the same cannot be interfered with lightly while exercising jurisdiction under Article 226 of the Constitution of India."

1984 I L.L.N. (Civil Appeal No. 2911 (NL) of 1981) :

Glaxo Laboratories (India) Limited, Versus Labour Court, Meerut and Others:—

"Standing Orders 22 and 23 of the company - Misconducts are enumerated in Standing Order 22 and punishment is prescribed in Standing Order 23 - Misconduct not enumerated in Standing Order is not punishable merely because employer believes it to be misconduct e*x post facto*."

A.I.R. 1989 S.C. Page 149 :

Scooter India Limited, Lucknow Versus *Labour Court, Lucknow and Others:—*

"The Labour Court has taken the view that justice must be tempered with mercy and that the erring workman should be given an opportunity to reform himself and prove to be a loyal and disciplined employee of the petitioner Company. It cannot therefore be said that merely because the Labour Court had found the enquiry to be fair and lawful and the findings not to be vitiated in any manner, it ought not to have interfered with the order of termination of service passed against the respondent in exercise of its powers under Section 6(2A) of the Act".

13. To prove the misconduct committed by the petitioner, RW.1 has marked the complaints received from the staff of the respondent management as Exs.R1 to Ex.R5. As per Ex.R1, the petitioner instigated the employees to join in the association and intimidated the staff members. In Exs.R2 to Ex.R5, the staff members has stated the same version. I do not know in what way, the contents found in Exs.R2 to Ex.R5 constitutes a misconduct as stated by the respondent. According to the respondent, the preliminary enquiry was conducted to ascertain the factual position and thereafter a charge sheet, dated 21-6-2005 was sent to the petitioner and based on the charge sheet, the enquiry was conducted against the petitioner. But Exs.R1 to Ex.R5 do not reveal anything about the said misconducts. Hence, the charges are vague and devoid of necessary particulars.

14. The learned counsel for the petitioner would submit that the provident fund code number mentioned in the pay slip for June 2005 issued by Padma Chemicals was PC/277A/33, while the provident fund code number for Chemfab Alkalis Limited, is PC/277A/138 and moreover in the pay slip issued by Padma Chemicals, his date of entry into the service was mentioned as 6-6-2005, while his date of entry into service of the respondent is 1-8-1987 and under the circumstances, the establishment of Padma Chemicals is not a branch of Chemfab Alkalis Limited, and the above two establishments were two independent establishments and hence for the misconduct alleged to have occurred in Padma Chemicals, the respondent management cannot take disciplinary action against the petitioner. He further submitted that as Chemfab Alkalis Limited, cannot legally transfer the petitioner to Padma Chemicals and as there was no master servant relationship between Padma Chemicals and the petitioner, the disciplinary action cannot be taken by Padma Chemicals against the petitioner.

15. The learned counsel for the respondent would contend that the units functioning at different locations eventhough under the same management, have to be allotted separate provident code numbers by the P.F. authorities and hence the entry in respect of the date of joining of the petitioner would be made according to his place of work, but this would not in any way affect the continuity of service of the petitioner for any statutory benefits. He further contended that the petitioner knows very well that Padma Chemicals is the salt division of the respondent company and hence the respondent company has every right to take disciplinary action for the misconduct committed by the petitioner, whilst is service with Padma Chemicals. In order to prove his contention, the learned counsel for the respondent relied upon the following decisions:—

JT 2004(8) S.C. 103 :

Divisional Controller KSRTC Versus *A.T. Mane:—*

"The domestic tribunal accepted that evidence and found the respondent guilty. But the courts below misdirected themselves in insisting on the evidence of the ticketless passengers to reject the said finding which, in our opinion, as held by this court in the case of Rattan Singh (*supra*) is not a condition precedent. We may herein note that the judgment of this court in Rattan Singh's (*supra*) has since been followed by this court in Devendra Swamy *Vs.* Karnataka State Road Transport Corporation."

2008(2) JCR 107 (SC) :

Workmen of Balmadies Estates Versus *Management Balmadies Estate and Others:—*

"The Indian Evidence Act, 1872 (in short the Evidence Act) is not applicable to the proceeding in a domestic enquiry so far as the domestic enquiries are concerned, though principles of fairness are to apply. It is also fairly well settled that in a domestic enquiry, guilt may not be established beyond reasonable doubt and the proof of misconduct would be sufficient. In a domestic enquiry, all materials which are logically probative including hearsay evidence can be acted upon provided, it has a reasonable nexus and credibility."

A.I.R. 1971 SC 2414 :

Francis Klein and Co. (P) Limited, Versus *Their Workmen and Another:—*

"Even this direction is not a valid direction because if once the company has lost confidence in its employee it is idle to ask them to employ such a person in another job. What job can there

be in a company which a person can be entrusted with and which does not entail reposing of confidence in that person."

(1991) I L.L.J. 372 Mad. :

Engine Valves Limited, Versus Labour Court, Madras and Another :—

"A specific finding must be recorded whether it was expedient and proper to reinstate the employee or whether award of compensation *in lieu of* reinstatement will meet the requirements and ends of justice of the case concerned. Absence of reasons to invoke the power and interfere under provisions of section 11(A) in a particular case would render the very exercise of powers arbitrary and perverse and the order consequently would stand vitiated."

A.I.R. 1998 S.C. 1064 :

M.H. Devendrappa Versus The Karnataka State Small Industries Development Corporation :—

"In the present case, the appellant had made direct public attack on the head of his organisation. He had also, in the letter to the Governor, made allegations against various officers of the corporation with whom he had to work and his conduct was clearly detrimental to the proper functioning of the organisation or its internal discipline. Making public statements against the head of the organisation on a political issue also amounted to lowering the prestige of the organisation in which he worked. On a proper balancing, therefore, of individual freedom of the appellant and proper functioning of the Government organisation which had employed him, this was a fit case where the employer was entitled to take disciplinary action under rule 22."

(2006) I L.L.J. 1004 S.C. :

Hombe Gowda Educational Trust and Another Versus State of Karnataka and Another :—

"In several decisions of this court, it has been noticed that how discipline at the work places/ industrial undertaking received a set back. In view of the change in economic policy of the country, it may not now be proper to allow the employees to break the discipline with impunity. Our country is governed by rule of law. All actions, therefore, must be taken in accordance with law. Law declared by this Court in terms of Article 141 of the Constitution of India, as noticed in the decisions noticed *supra*, categorically demonstrates that the tribunal would not normally interfere with the quantum of punishment imposed by the employers unless an appropriate case is made out therefor. The Tribunal being inferior to that of this court was bound to follow the decisions of this Court which are applicable to the fact of the present case in question. The Tribunal can neither ignore the ratio laid down by this Court nor refuse to follow the same."

16. As per the averments of the respondent, Padma Chemicals and the respondent unit are the same management. But there is no document produced on the side of the respondent to prove the said contention. In the absence of any such evidence, this court has come to the conclusion both units are not under the same management. Hence, the transfer of the petitioner from the respondent unit to Padma Chemicals is illegal.

17. Further contention of learned counsel for the petitioner is that the Enquiry Officer did not conduct the enquiry in accordance with law and principles of natural justice and the Enquiry Officer acted in a biased manner and the concept of fair opportunity of hearing was grossly violated.

18. *Per contra,* the contention of the learned counsel for the respondent is that the Enquiry Officer has meticulously followed the principles of natural justice in conducting the enquiry but for reasons best known to him, the petitioner has not made use of the reasonable and adequate opportunities afforded to him by the Enquiry Officer.

19. On the side of the respondent, the enquiry proceedings was marked as Ex.R22. On perusal of Ex.R22, it is seen that the enquiry has been commenced on 16-7-2006 and the petitioner has participated in the enquiry proceedings and the Enquiry Officer has permitted the petitioner to have the assistance of a co-worker and the petitioner brought one Kannaiyan as defence assistant and the same was permitted by the Enquiry Officer. A perusal of Ex.R22 further reveals that on the side of the respondent management, five witnesses have been examined and all the five witnesses have been cross-examined by the petitioner and then the petitioner did not participate in the enquiry proceedings and then the enquiry was closed and the Enquiry Officer submitted his report by holding that the charges levelled against the petitioner were proved. Then second show cause notice regarding proposed punishment under Ex.R24 was sent to the petitioner and the petitioner submitted his explanation under Ex.R26 and not satisfying with the explanation sent by the petitioner, the respondent sent the termination order under Ex.R27. Hence, the above documents would clearly proved that the respondent has conducted the enquiry in a fair manner and there was no violation of principles of natural justice. But as already stated,

the charges are vague and devoid of necessary particulars and hence no enquiry can be sustained on vague charges and consequently, the dismissal order passed by the respondent management based on the said enquiry is liable to be set aside.

20. The learned counsel for the respondent has submitted that the petitioner instead of seeking redressal of his grievances by lawful methods had unleashed along with the then drivers, without any reasonable cause or excuse, vilification campaign against the company and as a part of such vilification they have sent complaints to various authorities making outrageously false, frivolous, vexatious and baseless allegations against the respondent company touching upon its status and reputation and a thorough enquiry and spot verification by the concerned authorities brought to limelight the falsity of the allegations made by the petitioner and the then drivers and hence the respondent company by advocate notice, dated 18-7-2006 called upon the petitioner to tender unconditional apology for defaming the company and apprehending launching of civil and criminal proceedings against him, the petitioner has raised an industrial dispute of non-employment as a counter blast to the said notice and his attitude and approach have established his hatred towards the company. He further submitted that the private complaint in C.C. No. 86/2007 renumbered as C.C. No. 604/2009 filed against the petitioner is pending on the file of Judicial Magistrate-II, Pondicherry and the civil suit in O.S. No. 173/2006 claiming damages of ₹ 5,00,000 filed against the petitioner for defaming the company is pending on the file of Principal Sub-Judge, Pondicherry.

21. In order to prove the said fact, the learned counsel for the respondent has marked the copy of the letter sent by the petitioner to the State Ground Water Unit as Ex.R31, copy of the letter sent by the petitioner to the Member-Secretary, Department of Science, Technology and Environment as Ex.R32, copy of the advocate notice, dated 18-7-2006 sent to the petitioner as Ex.R33, copy of the complaint filed before the Judicial Magistrate-II, Pondicherry against the petitioner and others as Ex.R34, copy of the plaint in O.S. No.173/2006 on the file of Principal Sub-Judge, Pondicherry as Ex.R35. Exs.R31 to Ex.R35 prove the above contents of learned counsel for the respondent. Admittedly, the petitioner has been terminated from service on 28-9-2005 and after termination, he sent the above complaints to the various Government offices, complaining about the respondent company. When the petitioner has been terminated by the respondent, he has to seek redressal of his grievances by lawful methods. Instead of it, he sent various complaints about his employer to the various Government departments and caused mental agony to his employer, which cannot be tolerated. Hence, the petitioner cannot expect any back wages from his employer. In the above circumstances, the petitioner is not entitled for any back wages and other benefits. Accordingly, this point is answered.

22. In the result, the industrial dispute is partly allowed and the petitioner is entitled for reinstatement with continuity of service. However, he is not entitled for back wages and other benefits. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this 18th day of January, 2013.

T. MOHANDASS,
Presiding Officer,
Labour Court, Puducherry.

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List of petitioner's witnesses :

PW.1 — 8-8-2011 — Alwin Maria Susai

PW.2 — 25-6-2012 — Sundararajan

List of petitioner's exhibits :

Ex.P1 — Pay slip of the petitioner

Ex.P2 — Transfer order, dated 3-6-2005 issued to the petitioner.

Ex.P3 — Representation, dated 10-6-2005 sent by the petitioner to the respondent.

Ex.P4 — Charge sheet, dated 21-6-2005

Ex.P5 — Representation, dated 22-6-2005 by the petitioner to the respondent.

Ex.P6 — Complaint, dated 24-6-2005 given by the petitioner.

Ex.P7 — Copy of the telegraphic message given by the petitioner on 25-6-2005.

Ex.P8 — Copy of the telegraphic message given by the petitioner on 25-6-2005.

Ex.P9 — Reply, dated 25-6-2005 by the petitioner to the respondent.

Ex.P10 — Advocate notice, dated 28-6-2005 sent by the petitioner to the respondent.

Ex.P11 — Notice of termination, dated 28-9-2005

Ex.P12 — Representation, dated 5-10-2005 sent by the petitioner.

Ex.P13 — Reply, dated 11-12-2006 submitted by the petitioner to the respondent.

List of respondent's witnesses :

RW.1 — 24-8-2012 — Daniel Rajanayagam

List of respondent's exhibits :

Ex.R1 — Letter of complaint against the petitioner to Ex.R5

Ex.R6 — Charge sheet issued to the petitioner, dated 21-6-2005.

Ex.R7 — Explanation submitted by the petitioner, dated 25-6-2005.

Ex.R8 — Notice of enquiry issued to the petitioner, dated 1-7-2005.

Ex.R9 — Returned registered postal cover

Ex.R10 — Exhibits marked in the domestic enquiry.

Ex.R11 — Letter by the petitioner to the Enquiry Officer, dated 19-7-2005.

Ex.R12 — Reply letter by the respondent, dated 23-7-2005.

Ex.R13 — Letter by the petitioner to the Enquiry Officer, dated 23-7-2005.

Ex.R14 — Letter by the petitioner to the Enquiry Officer, dated 27-7-2005.

Ex.R15 — Reply letter, dated 30-7-2005 by the respondent.

Ex.R16 — Letter by the petitioner to the Enquiry Officer, dated 13-8-2005.

Ex.R17 — Letter by the petitioner to the Enquiry Officer, dated 18-8-2005.

Ex.R18 — Letter by the petitioner to the Enquiry Officer, dated 27-8-2005.

Ex.R19 — Letter by the petitioner, dated 27-8-2005

Ex.R20 — Reply letter by the respondent, dated 31-8-2005.

Ex.R21 — Letter by the respondent, dated 31-8-2005 to the Enquiry Officer.

Ex.R22 — Enquiry proceedings

Ex.R23 — Enquiry report, dated 12-9-2005

Ex.R24 — Show cause notice sent to the petitioner, dated 20-9-2005.

Ex.R25 — Tamil version of show cause notice, dated 20-9-2005.

Ex.R26 — Letter by the petitioner, dated 24-9-2005

Ex.R27 — Notice of termination of service, dated 28-9-2005.

Ex.R28 — Letter by the petitioner to the Labour Officer, dated 10-7-2006.

Ex.R29 — Reply letter by the respondent to the Labour Officer, dated 17-8-2006.

Ex.R30 — Failure report, dated 30-10-2006

Ex.R31 — Copy of the letter sent by Member-Secretary to the respondent, dated 30-6-2006.

Ex.R32 — Copy of the letter sent by Member-Secretary to the respondent, dated 11-7-2006.

Ex.R33 — Copy of the Advocate notice, dated 18-7-2006.

Ex.R34 — Copy of the private complaint in C.C. 86/2007

Ex.R35 — Copy of the plaint in O.S. No.173/2006

Ex.R36 — Copy of the extract of resolution passed by the respondent.

Ex.R37 — Copy of the extract of resolution passed by the respondent.

Ex.R38 — Copy of the factory licence issued to Padma Chemicals.

Ex.R39 — Copy of the factory licence.

T. MOHANDASS,
Presiding Officer,
Labour Court, Puducherry.

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 79/Lab./AIL/J/2013, dated 23rd May 2013)*

NOTIFICATION

Whereas, an award in I.D. No. 5/2012, dated 30-11-2012 of the Labour Court, Puducherry in respect of the industrial dispute between the Managing Director, M/s. Hindustan Unilever Limited, Detergent Factory, Puducherry and its workman Thiru A.S. Arokiyanathan, son of Augustin, over his non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A. M.L.,
Presiding Officer, Labour Court.

Friday, the 30th day of November 2012

I.D. No. 5/2012

A.S. Arokiyanathan, S/o. Augustin .. Petitioner

Versus

The Managing Director,
Hindustan Unilever Limited,
Detergent Factory, Puducherry. .. Respondent

This industrial dispute coming on 26-11-2012 for final hearing before me in the presence of Thiru R.T. Shankar, Advocate for the petitioner, Tvl. L. Sathish and D. Dayanithi, Advocates for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following :

AWARD

The petitioner has filed a case before the Conciliation Officer as against the dismissal order passed by the respondent and since the said case has not been disposed off within 45 days, this industrial dispute is filed by the petitioner before this court under section 2-A of Industrial Disputes (Amendment) Act, 2010 (24 of 2010).

2. The petitioner, in his claim statement, has averred as follows:

The petitioner was working as permanent employee in the respondent company from 7-11-1997 and he was a member in the Hindustan Unilever Employees Union.

The respondent raised a false allegation against the petitioner that from 19-2-2010 to 30-6-2010 he has taken leave without approval from the management and the enquiry was conducted, for which, the H.R. Manager was appointed as Enquiry Officer. The Enquiry Officer has not conducted the enquiry in a fair manner and had acted as management representative and had conducted the enquiry in biased manner. Further in the enquiry, the petitioner was threatened to accept the charges in writing by the Enquiry Officer. In the enquiry, the Enquiry Officer had refused to give sufficient opportunity to the petitioner and had refused to mark even a single document on the part of the petitioner. The petitioner was also not permitted to examine even a single witness on his side. Based on the report of the enquiry officer, the petitioner was dismissed from service from 17-3-2011. The dismissal of the petitioner is in violation of principles of natural justice and contrary to the provisions of Industrial Disputes Act.

Further on the date when he was terminated, two conciliation proceedings concerning their union were pending before the Conciliation Officer. Hence, the respondent management has not followed section 33(2)(b) of Industrial Disputes Act. In the above circumstances, the present industrial dispute is filed for his reinstatement along with other benefits.

3. In the counter statement, the respondent has stated as follows:

The petitioner was employed as general worker with effect from 8-11-1997. The petitioner was a chronic absentee taking leave without authorisation. The petitioner continued to be erratic in his attendance and remained unauthorisedly absent on various dates from 12-6-2010 onwards frequently. When the petitioner did not turn up for employment till 27-7-2010, the respondent issued a detailed charge sheet on 28-7-2010, which was received by the petitioner, but he failed to submit any reply. Then the enquiry was conducted and in the enquiry proceedings, the petitioner categorically admitted the fact that he had remained unauthorisedly absent from 19-2-2010 and even thereafter. The Enquiry Officer submitted his detailed report on 9-11-2010 by coming to the conclusion that the petitioner was guilty of the charges levelled against him. The respondent immediately issued a second show cause notice along with the enquiry report to the petitioner on 11-1-2011, which returned unserved with endorsement "Left". The respondent published the second show cause notice in Thina Thanthi Tamil daily and the petitioner did not respond to such publication. Then the respondent terminated the petitioner *vide* order, dated 17-3-2011 and it was also not received by the petitioner. The respondent once again published the petitioner's termination order in Thina Thanthi Tamil daily. The petitioner was removed from the services for a grave misconduct of chronic, habitual absenteeism, which was admitted by him in an independent and impartial domestic enquiry. Hence, the dismissal of the petitioner from service is fully justified. Therefore, the respondent prays for dismissal of the industrial dispute.

4. On the side of the petitioner, PW.1 and PW.2 were examined and Ex.P1 to Ex.P9 were marked. On the side of the respondent, RW.1 was examined and Ex.R1 to Ex.R14 were marked.

5. *The point for determination is:*

Whether the petitioner can be considered for reinstatement in service with accrued benefits?

6. *On the point* :

According to the petitioner, he was working as permanent employee in the respondent company from 7-11-1997 and the respondent raised a false allegation against him that from 19-2-2010 to 30-6-2010 he has taken leave without approval from the management and the enquiry was conducted, for which, the H.R. Manager was appointed as Enquiry Officer and the Enquiry Officer has not conducted the enquiry in a fair manner and had acted as management representative and had conducted the enquiry in biased manner and in the enquiry, he was threatened to accept the charges in writing by the Enquiry Officer. In order to prove his contention, the petitioner was examined as PW.1.

7. *Per contra*, the contention of the respondent is that the petitioner was a chronic absentee taking leave without authorisation and he continued to be erratic in his attendance and remained unauthorisedly absent on various dates *i.e*., 141 days from 1-1-2009 to 29-6-2009 and 72.5 days from 30-6-2009 to 18-2-2010 and hence they issued a detailed charge sheet, which was received by him, but he failed to reply for the same and then the enquiry was conducted and in the enquiry proceedings, the petitioner categorically admitted the fact that he had remained unauthorisedly absent from 19-2-2010 and based on the report of the Enquiry Officer, he was dismissed from service. In order to prove his contention, the H.R Executive was examined as RW.1.

8. In order to prove his claim, RW.1 has marked the copy of the attendance record for the period from January 2007 to June 2008 as Ex.R13 and the computerised statement of overall percentage of authorised and unauthorised absenteeism from January 2006 to December 2012 as Ex.R14. A perusal of Ex.R14 reveals that the percentage of both authorised and unauthorised absenteeism as on December 2012 is 26.49%.

9. In this regard, the learned counsel for the petitioner has submitted that in the year 2002, a long term settlement was signed by the trade unions, it has been agreed by both the parties that the computerised time attendance system will be implemented and therefore the respondent management introduced a time attendance system in the year of 2003 and after that in the year 2005, the respondent management without consultation of any unions or any terms of employment or leave rules or standing order clause unilaterally introduced the attendance/automatic lock/reject system and this was disputed by the trade union. The learned counsel for the petitioner further submitted that the petitioner union filed a writ petition before the Hon'ble High Court, Madras and the Hon'ble High Court dismissed the said petition stating that they can raise the said dispute before the Industrial Tribunal for remedy.

10. On the side of the petitioner, the President of the Hindustan Unilever Employees Association was examined as PW.2. PW.2 in his evidence has deposed that he was working as Skilled Operator in the respondent company and the petitioner is the member of his association and Ex.P5 is the application given by the petitioner for joining his association, PW.2 further deposed that the respondent company introduced computerised time attendance system and whenever the workmen registered their names, it was programmed that registration will be directly rejected and utilising the said programme and with a view to victimise the workers, the registration was locked and the petitioner complained that his presence was not registered in the computer and the same was complained to the Labour Officer (Conciliation) under Ex.P8 and since he has not taken any steps, the union filed a writ petition before the Hon'ble High Court, Madras and Ex.P9 is the copy of the judgment given by the Hon'ble High Court, Madras. A perusal of Ex.P9 reveals that the petitioner's union complained about introduction of computerised time attendance system and the Hon'ble High Court, Madras after discussing all the material aspects, dismissed the writ by stating follows:

> "The union have agreed for the introduction of TAS system of attendance by a settlement. Therefore, it is too late for the petitioner to question the same. ... ... Therefore, it cannot be said that the action of the second respondent is illegal and without the authority of law. Even otherwise, under section 111-A of the Factories Act, 1948, every workman employed in the factory is entitled to obtain from the occupier the information relating to workers' health and safety at work. As per section 111-A (iii), he can also represent to the Inspector directly or through his representative the matter of inadequate provision for protection of his health and safety in the factory. Therefore, in case of violation of any of the provisions of the Factories Act or Rules made thereunder, it was always open to the workmen or through their representative to complain to the appropriate authority and seek redressal."

The Hon'ble High Court, Madras in Ex.P9 has given direction to the petitioner's union to approach appropriate authority for their relief. The petitioner has not filed any document to prove that his union approached the concerned authority for their remedy or preferred the appeal as against the judgment of the Hon'ble High Court, Madras. In the above circumstances, Ex.P9 becomes final and it binds the petitioner's union and consequently, the contention of the learned counsel for the petitioner that the introduction of attendance/automatic lock/reject system is illegal, cannot be accepted. Hence, the respondent has proved through Ex.R13 and Ex.R14 that the

petitioner, has unauthorised absent for 141 days from 1-1-2009 to 29-6-2009 and 72.5 days from 30-6-2009 to 18-2-2010.

11. The contention of the learned counsel for the petitioner is that the petitioner has been working under the respondent company for the past 12 years, but in the enquiry proceedings, without taking sufficient time, the respondent has finished the entire enquiry proceedings and closed it and therefore with intention and motivation, the respondent management has been acted against the petitioner and hence, the enquiry was not conducted fair and proper manner.

12. On the other hand, the contention of the learned counsel for the respondent is that the enquiry was conducted in a free and fair manner by giving full opportunity to the petitioner to disprove the charges and there is absolutely no lacuna in the enquiry proceedings and it has been conducted in a free and fair manner after following all the requisites principles of natural justice. He further submitted that the petitioner during the enquiry proceedings admitted the charges and based on his admission, the petitioner was found guilty of the charges.

13. RW.1 has marked the copy of the enquiry proceedings as Ex.R1. On perusal of Ex.R1, it is seen that the entire proceedings beginning with charge sheeting the petitioner to issuing 2nd show cause notice to the him were done in Tamil, the Enquiry Officer explained the entire proceedings in detail to the petitioner in Tamil, the Enquiry Officer offered permission to the petitioner to engage defense assistance of his choice and in the enquiry proceedings, the petitioner has categorically admitted the fact he had remained unauthorisedly absent, as stated in the charge sheet and he did not want to say anything. The petitioner signed in the enquiry proceedings to that effect. Hence the petitioner was found guilty of the charges and based on the enquiry report, the second show cause notice was issued under Ex.R9 intimating the punishment of dismissal and since the petitioner did not claim the said notice, the dismissal order under Ex.R11 was sent to the petitioner.

14. The learned counsel for the petitioner has submitted that in the enquiry proceedings, the H.R. Executive had prepared all the charges and commanded and demanded this petitioner to obtain his signature over the same, such act is absolutely illegal and violation of principles of natural justice.

15. But the petitioner has not produced any evidence to show that his signature was obtained in the enquiry proceedings forcibly. In the above circumstances, the said version is only an after thought, which cannot be accepted.

16. The contention of the learned counsel for the petitioner is that the general procedure at the enquiry would normally be the appointment of Enquiry Officer has to be informed to the petitioner by the respondent management but the respondent management neither inform nor appoint any Enquiry Officer for conducting the enquiry, but the H.R. Executive himself acted as an Enquiry Officer and conducted the domestic enquiry without following the principles of natural justice.

17. It is true that the H.R. Executive of the respondent management was acted as Enquiry Officer. When the petitioner himself admitted the charges framed against him, this court need not see the other aspects. Hence, there is nothing wrong in conducting the domestic enquiry by the H.R. Executive of the respondent management. In the above circumstances, I find that the enquiry conducted by the respondent management is fair and proper.

18. The further contention of learned counsel for the petitioner is that the respondent had not followed section 33(2)(b) of Industrial Disputes Act, 1947 and had dismissed the petitioner unlawfully and as per the said section, the employer may pass an order of dismissal or discharged and at the same time make an application for approval of the action taken by him and if the approval is not granted under section 33 (2)(b) of Industrial Disputes Act, 1947, the order of the dismissal becomes ineffective from the date it was passed and failure to make application under the said section would render the order of dismissal inoperative. In order to support his claim, he relied upon the following decision:

2002(1) L.L.N. 639:

Jaipur Zila Sahakari Bhoomi Vikas Bank Limited, Versus Ram Gopal Sharma and others:-

> "Industrial Disputes Act, 1947, S33(2)(b), Proviso (as amended in 1956) - If approval is not granted under section 33(2)(b) or failure to make application under S.33(2)(b) seeking approval, renders order of dismissal inoperative -Dismissal becomes ineffective from date it was passed -Employee becomes entitled to wages from date of dismissal".

19. On the other hand, the learned counsel for the respondent has submitted that the petitioner is not a member of Hindustan Unilever Employees Union and the petitioner is no nexus connection with the disputes which is pending before the Conciliation Officer and the industrial dispute was raised, as individual capacity of the petitioner under section 2-A of Industrial Disputes Act,

20. PW.2, the President of the Hindustan Unilever Employees Association in his evidence has deposed that the petitioner was a member in their association and the copy of the admission application was marked through him as Ex.P5. As per Ex.P5 the petitioner was a

member in Hindustan Unilever Employees Union from 6-3-2008. The petitioner as PW.1 has marked the receipt issued by Hindustan Unilever Employees Union as Ex.P1, dated 4-1-2011. On perusal of Ex.P1, it is seen that the original date has been corrected as 4-1-2011 manually.

21. The learned counsel for the respondent has submitted that the receipt, dated 7-1-2011 issued in I.D. No. 3/2012 bears the receipt No. 554, but the receipt dated 4-1-2011 under Ex.P1 in this case bears the receipt number 597 and the genuine receipts can only be in ascending order and not be in descending order from 597 on 4-1-2011 to 554 on 7-1-2011.

22. On perusal of Ex.P1 reveals that originally the receipt was issued on 12-1-2011 and subsequently, it has been changed as 4-1-2011 and if the date was 12-1-2011, definitely the receipt can be in ascending order *i.e.* receipt No. 554, dated 7-1-2011 (I.D. No. 3/2012) and the receipt No. 597, dated 12-1-2011. The manual correction in Ex.P1 will not be in any way helpful to the case of the petitioner. Even PW.2, the President of the Hindustan Unilever Employees Union himself has appeared before this court and deposed that PW.1 was a member in their union and PW.2 also failed to explain properly the above contradictions.

23. The learned counsel for the respondent has submitted that PW.2, the union leader was extensively cross-examined on the membership of the petitioner and his attention was brought to non-production of certified register containing names of the members of union as required in Trade Unions Act, the non-production of audited balance-sheet of the union with full details on subscription collected from its members and PW.2 could not give any convincing answers to these questions in cross-examination.

24. It is true that the register containing names of the members of the union and the audited balance sheet of the union have not been produced on the side of the petitioner. Eventhough PW.2 in his cross-examination has stated that they are maintaining the said registers and they are ready to produce the same, if required, when the membership of the petitioner is challenged by the respondent, it is the duty of the petitioner to produce the above documents before this court. But the petitioner has not taken any serious steps to produce the above said documents. In the above circumstances, the oral evidence of PW.2 and the documentary evidence of Ex.P1 and Ex.P5 is not in any way helpful to the case of the petitioner that he was the member in the Hindustan Unilever Employees Union from 2008.

25. The learned counsel for the respondent has submitted that the petitioner has never pleaded and proved as to what was the dispute that was involved in the other two references to the conciliation and how the petitioner is connected to the said dispute. He further submitted that the present dispute is only an individual dispute under section 2-A of Industrial Disputes Act unsupported and unsponsored by any union, whereas the two conciliation proceedings referred to by the petitioner were industrial disputes raised by the unions under section 2(k) concerning general working conditions of all the workers. He further submitted that the disputes raised in the previous conciliation proceedings by Hindustan Unilever Employees Union had absolutely no nexus or connection with the petitioner. In order to support his claim, he relied upon the following decisions:

CDJ 1962 SC 016

Digwadih Colliery Versus Ramji Singh:

"The respondent's case set out in this application appears to be that, because there was Reference No.60 of 1959 pending between the appellant and some of its employees, S. 33(2) applied, but, unless it is known as to what was the nature of the dispute pending in the said reference, it would plainly be impossible to decide whether the respondent is a workman concerned within the meaning of S.33(2). In his application, the respondent has made no averment about the nature of the said dispute; and so the tribunal was clearly in error in holding that the broad construction of S.33(2) automatically led to, the conclusion that the respondent was the workman concerned and could, therefore, claim the protection of S.33(2)."

1992 1LLJ 837 Madras

Rajagopal and Others Versus EDI Party Limited and another:

"10. In the instant case, even assuming that the first petitioner was a member of the union which had sponsored the dispute, the first petitioner was not bound by the award that was passed; nor was he directly connected with the dispute already pending before the Labour Court. In view of the aforesaid reasoning that the first petitioner cannot be construed as the workman concerned and if the first petitioner happened to be the workman not concerned with the dispute for the reasons stated above, there was no need for the employer to seek permission as contemplated under section 33(2)(b) of the Act. Simply because the first petitioner happened to be the member of the union, which sponsored the dispute, the petitioner cannot claim that he is a workman concerned with reference to the dispute which was then pending unless there is some other common feature in the disputes which were pending and the claim of the petitioner".

26. It is true that the present industrial dispute was filed by an individual name of the petitioner. If the conciliation has not been completed within 45 days, the individual can file the claim statement directly before the Labour Court as per amended section 2-A of Industrial Disputes Act, 1947. Accordingly, the petitioner has filed the present industrial dispute before this court. Hence, I find nothing wrong in filing the present industrial dispute by the petitioner individually.

27. Further the learned counsel for the respondent himself has admitted that there were two conciliation proceedings pending at the time of termination of the petitioner, but his only defence is that the disputes raised in the previous conciliation proceedings by the union had absolutely no nexus or connection with the petitioner.

28. In this regard, the learned counsel for the petitioner has submitted that the dispute was raised for changing of service condition, since the respondent management without giving 9-A notice to the union changed their service condition including the petitioner herein in I.D. No. 1458/2009/LOC/AIL and the another dispute was raised for declaration of paid holidays in violation of 12(3) Settlement in I.D. No.2563/2010/LO(C)/AIL. In order to prove the same, PW.1 has marked the copy of the notice of enquiry sent to the respondent management as Ex.P2 and Ex.P3. It is already decided that the petitioner has not proved that he was a member of Hindustan Lever Employees Union. Hence, Ex.P2 and Ex.P3 would not support the case of the petitioner. The learned counsel for the respondent has not challenged the documents under Ex.P2 and Ex.P3. In the above circumstances, when the Conciliation Officer has conducted the conciliation in respect of the issues with regard to the service conditions of the employees and declaration of paid holidays pertaining to the respondent management, this court has to see whether the approval under section 33(2)(b) of Industrial Disputes Act in this case is legally required or not. Eventhough the petitioner is an employee under the respondent management, he has not proved that he is a member in Hindustan Unilever Employees Union, who has raised the said issues. Hence, section 33(2)(b) of Industrial Disputes Act is not applicable to the petitioner, as such the respondent management has rightly decided that they need not pay the wages for one month and need not file an application to the authority before which the proceeding is pending for approval of the action taken by them.

29. The learned counsel for the respondent submitted that the issue of chronic absenteeism has become a very serious issue in the respondent's factory, crippling its production and productivity and disturbing its work schedules and manpower allotment and the high percentage of unauthorised absenteeism clearly indicates that workers are taking their employment casually and the leniency shown by the respondent in the past in not taking stringent disciplinary action was also an encouraging factor. The learned counsel for the respondent relied upon the following decisions to support his claim:

CDJ 2009 SC 1194:

Union of India Versus Ors. Vs. Bishamber Das Doara:-

"Admittedly, the respondent employee has not completed the service of six years and had been imposed punishment three times for remaining absent from duty. On the fourth occasion when he remained absent for 10 days without leave, the disciplinary proceedings were initiated against him. ...

... There is nothing on record to show any explanation for such repeated misconduct or absenteeism. The Court/Tribunal must keep in mind that such indiscipline is intolerable so far as the disciplined force is concerned. The respondent was a guard in CISF. No attempt had ever been made at any stage by the respondent - employee to explain as to what prejudice has been caused to him by non-furnishing of the enquiry report.

Appeal filed by the respondent employee was decided by the statutory appellate authority giving cogent reasons. The facts of the case did not present special features warranting any interference by the Court in limited exercise of its powers of judicial review. In such a fact situation, we are of the view that the High Court should not have interfered with the punishment order passed by the disciplinary authority on such technicalities.".

CDJ 2007 MHC 3398:

G. Vijayan Versus The Presiding Officer, Labour Court, Salem and Another:

"This is a classic instance wherein misplaced sympathy has been shown by the Labour Court, having found that the domestic enquiry was conducted in a fair manner. This practice of showing misplaced sympathy or generosity or compassionate ground to review the quantum of punishment is held to be impermissible by hierarchy of judgments of the Apex Court. It is also clear that the Apex Court has held that only in cases where the punishment awarded is shockingly disproportionate to the charge proved, the Court can interfere to reduce the punishment. .. .. The award of the labour in ordering reinstatement of the appellant with service benefits, however, without back wages is not on proper and sound reasoning as found by the learned single Judge. In view of the same, the writ appeal fails and the same is dismissed.".

2006-1-LLJ-55 (Madras)

O. Krishnan Versus Management of Dheeran Chinnamalai Transport Corporation:

"In the present case, however, apart from unauthorised absence for which disciplinary proceedings were being initiated, the disciplinary authority has relied upon the fact that on previous occasions also the petitioner had remained unauthorisedly absent. The disciplinary authority had also considered the fact that there has been several other punishments imposed upon the petitioner on numerous occasions and considering all these aspects, the disciplinary authority had come to the conclusion that the person was to be dismissed. The Labour Court on independent consideration has also come to the very same conclusion and has held that punishment of dismissal was justified in the peculiar facts and circumstances of the case. In the absence of any patent illegality in such orders, it is difficult for the High Court to come to any different conclusion and to interfere with the punishment".

2010-4-LLJ 245:

Indian Coffee Board Versus The Presiding Offcer:

"Not only has no evidence/document whatsoever of illness has been produced but no particulars of the serious prolonged illness, if any, suffered by the respondent No. 2 workman have been stated. ... . Court recently in Union of India *Versus* Bishamber Das Dogra MANU/SC/0887/2009 has reiterated that absenteeism is a gross violation of discipline. It goes without saying that such absenteeism of a workman can paralyze the working/ functioning of the employer. The Labour Court ignored the facts which starte one in the face in the facts of the present case.".

30. Now we have to see whether the punishment of dismissal is proportionate to the charges levelled against the petitioner for unauthorised absence. The petitioner in the disciplinary proceedings has admitted the charges and prayed leniency for the unauthorised absence. Apart from the above, according to the respondent, the petitioner was an employer under them from 8-11-1997 and he was chronic absentee from 2009 only. Prior to 2009 there was no remarks or misconduct by the petitioner. Of course the history sheet of the workman shows that the period of absence from 2009 to 2010 are very much long period of absence, which cannot be considered leniently. More than two spells of unauthorised leave taken by the petitioner were admitted by the petitioner, which were also warned in time, and he was also suspened for two weeks for unauthorised absent from 30-6-2009 to 18-2-2010. These lapses are very serious in nature and hence considering the habit of long unauthorised absence, I feel that he cannot be reinstated into service. However, the punishment of dismissal from the service is disproportionate one, but I am of the opinion that he can be awarded the monetary compensation in the circumstances of the case. Hence, I feel that the monetary compensation only will be the better solution in this case to settle this dispute between the parties, which would meet the ends of justice. Considering the service of the petitioner and starving family members depending the workman for livelihood, he can be awarded a sum of ₹ 2,00,000 in lump sum towards compensation. Accordingly, this point is answered.

31. In the result, the industrial dispute is partly allowed and the petitioner is not entitled for reinstatement and the other benefits. However, he is entitled for ₹ 2,00,000 (Rupees two lakhs only) towards monetary compensation. No costs. Time for three months.

Typed to my dictation, corrected and pronounced by me in the open court on this the 30th day of November, 2012.

T. MOHANDASS,
Presiding Officer, Labour Court,
Puducherry.

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List of witnesses examined for the petitoner:

PW.1 — 28-9-2012- A.S. Arokiyanathan

PW.2 — 12-10-2012 - Ezhumalai

List of witnesses examined for the respondent:

RW.1 — 25-10-2012 - Arokia Berdila Anand

List of exhibits marked for the petitioner:

Ex.P1 — Receipt for admission in the union, dated 4-1-2011.

Ex.P2 — Copy of notice sent by the Conciliation Officer.

Ex.P3 — Copy of the notice sent by the Conciliation Officer, dated 2-11-2010.

Ex.P4 — Dispute raised by the petitioner before the Conciliation Officer, dated 9-11-2011.

Ex.P5 — Copy of the admission application for joining in the union, dated 6-3-2008.

Ex.P6 — Copy of the letter, dated 13-5-2008 sent to the Inspector of Factories.

Ex.P7 — Copy of the conditions of service for change, dated 21-10-2010.

Ex.P8 — Copy of the letter sent to the Inspector of Factories, dated 20-2-2008 by the union.

Ex.P9 — Copy of the judgment of Hon'ble High Court, dated 8-6-2010.

List of exhibits marked for the respondent:

Ex.R1 — Copy of the enquiry proceedings marked through PW.1 in cross.

Ex.R2 — Authorisation letter, dated 24-10-2012

Ex.R3 — Copy of the show cause notice to petitioner, dated 10-1-2006.

Ex.R4 — Copy of the advise letter given by the respondent, dated 31-1-2006.

Ex.R5 — Copy of the charge sheet issued to the petitioner, dated 30-6-2009.

Ex.R6 — Copy of the letter given by the petitioner, dated 9-1-2010.

Ex.R7 — Copy of the enquiry proceedings

Ex.R8 — Copy of the enquiry report, dated 9-11-2008

Ex.R9 — Copy of the second show cause notice, dated 11-1-2011.

Ex.R10 — Copy of the paper publication, dated 30-1-2011.

Ex.R11 — Copy of the termination order, dated 6-5-2011.

Ex.R12 — Copy of the termination order published in the Thina Thanthi newspaper, dated 6-5-2011.

Ex.R13 — Copy of the extract of computerised muster roll.

Ex.R14 — Computerised statement of overall percentage of authorised and unauthorised absenteeism.

T. Mohandass,
Presiding Officer, Labour Court,
Puducherry.

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 80/Lab./AIL/J/2013, dated 23rd May 2013)*

NOTIFICATION

Whereas, an award in I. D. No. 18/2009, dated 19-2-2013 of the Labour Court, Puducherry in respect of the industrial dispute between the Managing Director, M/s. Athiappa Chemicals (P) Limited, Mettupalayam, Puducherry and Athiappa Chemicals (P) Limited Employees' Welfare Union (AEWU) over non- employment of 34 workers has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

S. Thammu Ganapathy,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. Mohandass, m.a., m.l.,
Presiding Officer, Labour Court.

Wednesday, the 19th day of February 2013

I.D. No. 18/2009

The President, .. Petitioner
Athiappa Chemicals (P) Limited
Employees' Welfare Union,
M.G. Road, Puducherry.

Versus

The Managing Director, .. Respondent
Athiappa Chemicals (P) Limited,
Mettupalayam, Puducherry.

This industrial dispute coming on 7-2-2013 for final hearing before me in the presence of Thiru M. Nakkeeran, Advocate for the petitioner, Thiru B. Mohandass, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Puducherry, *vide* G.O. Rt. No.122/AIL/Lab./J/2009, dated 20-8-2009 of the Labour Department, Puducherry to resolve the following dispute between the petitioner and the respondent, *viz.*,

(1) Whether the dispute raised by Athiappa Chemicals (P) Limited Employees' Welfare Union (AEWU), Puducherry against the management of M/s. Athiappa Chemicals Private Limited, Mettupalayam, Puducherry over non-employment of 34 workers *viz.*, 1. N. Indirani, 2. P. Kasthuri, 3. M. Ponnusamy, 4. S. James, 5. K. Vinayagam, 6. S. Arumugam,

7. Subramani, 8. K. Pandurangam, 9. S. Subulakshmi, 10. S. Panjavarnam, 11. L. Rejendran, 12. S. Nithiyanandadoss, 13. P. Senthilkumar, 14. Prasannakumar, 15. R. Rani, 16. A. Aravalli, 17. S. Murugan, 18. B. Murugan, 19. B. Bivith Jena, 20. H. Ajay Nayak, 21. G. Sona Thana, 22. S. Samaya Swain, 23. P. Pranap Mohanthi, 24. B. Manmogandoss, 25. C. Meer Kumar, 26. P. Ajay Kumar Routh, 27. D. Jega, 28. Subadha Jena, 29. A Raman, 30. N. Loganath, 31. Kaladiswain, 32. Duryadhana, 33. S. Periyasamy and 34. M. Chandra Kumar is justified or not?

(2) If justified, to what relief, the petitioners are entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed.

2. The petitioner in his petition has stated as follows:-

The respondent is an industry in existence for more than 15 years and is engaged in production of barium carbonate, sodium sulphate and barium carbonate. The poor workers have been subjected to occupational hazards like skin irritation, eye irritation, ulcers, diminishing of vision, hair falling etc. All the workers, who are working for more than ten years, have not been provided with E.S.I. and E.P.F. benefits. The provisions of factories act and other labour welfare acts have not been implemented. There is no provision for clean drinking water, sufficient toilet facilities and seating arrangements for workers working on standing position for hours.

In order to safeguard the interest of the workers and to help them to assert their rights, the petitioner trade union was formed on 25-5-2006. Hence, the management had foisted a false criminal case against the poor workers of Orissa. Various representations were sent by the petitioner union to the Labour Department and other authorities about the victimisation resorted by the management and requesting enquiry under the payment of wages act and other provisions of law. The privileges available to the office-bearers of the union under the industrial disputes act have not been considered by the management. On the contrary, the President, Secretary, Treasurer and other Executive Committee Members were targeted and charge sheeted and the enquiries were conducted without observing the rules of natural justice.

On 10-8-2006, the respondent's factory was alleged to have discharged toxic effluents in the air, affecting the environment and also stated to have affected children and people living in the vicinity of the factory. Consequently, the respondent announced lock out from 12-8-2006 without providing information or issuing notice to the employees. The respondent laid off 45 workers working in their industry. The laid off workmen were not given salary from August 2006 and bonus for 2005 and 2006. They were also not even paid any compensation.

The respondent reopened the industry from 6-7-2007 subsequent to the order passed by the Hon'ble High Court on 26-6-2007 in W.P. No.18483 of 2007. But the respondent failed to employ the workers, who were laid off and engaged fresh hands in the place of laid off workers against the law. Hence, the petitioner union filed an application in M.P. No.3 of 2007 in W.P. No.18483 of 2007 for impleading them as a party to the writ proceedings and for a direction to the respondent to engage the erstwhile workers employed by it pending disposal of the writ petition. By order, dated 26-9-2007, the Hon'ble High Court has granted permission to implead the petitioner union as a party. The respondent management before the Hon'ble High Court gave assurance to recall the laid off workmen as soon as the company recommences its operations. But after recommencement of the operations, the respondent recalled 10 workmen only on 26-10-2007 and started production by engaging new labours. Hence, the petitioner gave representations repeatedly to the management for reemployment of all 45 laid off workmen. Since the respondent failed to reemploy all the said laid off workers, the dispute was referred to the Labour Officer (Conciliation) and since the conciliation proceedings ended in failure, the Labour Officer reported failure of conciliation on 12-12-2008. In pursuance, the Government of Puducherry has referred the said dispute for adjudication before this court.

3. The respondent in his counter has stated as follows:-

The respondent company was issued with a closure order, dated 11-8-2006 by the Department of Science and Technology without prior notice based on a report published in the newspaper that four children had fainted in the vicinity of the respondent unit. The order of closure was challenged by the respondent in W. P. No. 18483 of 2007 before the Hon'ble High Court, Madras.

By an *interim* order, dated 26-6-2007, the industrial unit of the respondent company was allowed to commence its operations and the Regional Director, National Environmental Engineering Research Institute, Chennai was asked to inspect the unit and

submit a report about the status of air pollution impact from the respondent unit. The Hon'ble High Court also observed that the respondent in the above writ petition were unable to show any material to sustain the order of closure and that there was not a shred of evidence to show that the industrial unit had caused air and water pollution and set aside the order of Pondicherry Pollution Control Board, dated 4-5-2007.

The petitioner union filed an application in M.P. No. 3/2007 in the above writ petition to get itself impleaded as third respondent and the Hon'ble High Court passed orders on 26-9-2007 allowed the said application and recorded the submission of the senior counsel appearing for the respondent company that due to the closure of the unit, the employees could not be given any work during last one year before that date and as the closure order had been set aside, the company would recommence its operations and provide employment to the workers and they would be called in for the work in batches. Accordingly after taking note of the prevailing circumstances and administrative exigencies, the respondent management has offered work to ten employees and out of ten, one employee by name Chandrakumar was returned to the management with the postal endorsement "not claimed", while others acknowledged the receipt of the letters. The said nine employees reported to duty on 1-11-2007. Subsequently on account of improvement in production and necessity to meet the demands to the customers, the management offered employment to 7 other workers namely 1. N. Devanathan, 2. S. Diwan Routh, 3. M. Ponnusamy, 4. N. Indirani, 5. S. James, 6. K. Ragunathan and 7. S. Radhakrishnan and they reported duty on 5-1-2008. As regards N. Devanathan, he reported to duty in the morning of 5-1-2008 and then he did not turn up for work. The letter sent to Indirani was returned to the management with the postal endorsement 'not claimed' while the letter sent to James was returned with postal endorsement 'no such addressee'-Ponnusamy tendered leave letter seeking leave from 5-1-2008 on account of his trip to Sabarimala and then he did not turn up for duty. As such S. Diwan Routh, K. Ragunathan and S. Radhakrishnan alone reported to duty and continued their employment.

During the pendency of the industrial dispute before the Conciliation Officer, the petitioner union gave strike notice dated 27-12-2007 and in accordance with the said notice, the workmen, who were members of the said union resorted to illegal strike from 10-1-2008 onwards. The Conciliation Officer took note of the said unlawful strike and has given show cause notice, dated 25-2-2008.

The Conciliation Officer submitted failure report, dated 12-12-2008. Subsequently through letter, dated 2-3-2009, the Conciliation Officer requested the respondent management to furnish particulars of persons reemployed and persons not reemployed to transmit the same to the Labour Commissioner. Accordingly, the respondent submitted the list of 40 persons originally employed and the list of 17 persons reemployed.

There are some subsequent developments after the reference of the industrial dispute by the Government to this court. Lot of changes have taken place which have got a bearing on the claim made by the petitioner union for reinstatement with back wages. The Puducherry Pollution Control Committee passed order, dated 16-11-2011 for closure of the industry run by the respondent company. The respondent company preferred appeal before the appellate authority at New Delhi. In the above appeal, the said authority passed orders on 5-7-2012 directing NEERI, Chennai to inspect the petitioner industry and to submit report regarding air pollution norms and the appeal is pending. Hence, the non-employment of the workmen in respect of whom the petitioner union has raised industrial dispute is not on account of any voluntary act on the part of the respondent company. As such the respondent cannot be found fault with for the non-employment of the workmen which was on account of the order of the closure of the industry by the Government department for no fault of the respondent. Hence, they pray for dismissal of the industrial dispute.

4. On the side of the petitioner, PW.1 was examined and no document was marked. On the side of the respondent, RW.1 was examined and Exs.R1 to Ex.R13 were marked.

5. *The point for consideration is:*

Whether the industrial dispute can be allowed?

6. *On this point:*

The contention of the petitioner is that on 10-8-2006 the respondent's factory was alleged to have discharged toxic effluents in the air, affecting the environment and consequently they announced lock out from 12-8-2006 as ordered by the Pollution Control Committee and laid off 45 workers working in their industry and the respondent reopened the industry from 6-7-2007 subsequent to the order passed by the Hon'ble High Court, Madras, but the respondent failed to employ the workers, who were laid off and engaged fresh hands in the place of laid off workers against the law. In order to prove their claim, the President of Athiappa Chemicals (P) Limited, Employees' Welfare Union was examined as PW.1.

7. *Per contra,* the contention of the respondent is that the non-employment of the workmen in respect of whom, the petitioner union has raised industrial dispute is not on account of any voluntary act on the part of the respondent company and as such the respondent cannot be found fault with for the non-employment of the workmen, which was on account of the order of the closure of the industry by the Government Department for no fault of the respondent. They further contended that only on account of the steps taken by the respondent before the Hon'ble High Court, the earlier order of the Government for closure was set aside and the workmen were reemployed as per the directions made in the writ petition. In order to prove their claim, the manager of respondent company was examined as RW.1.

8, It is an admitted fact that the petition mentioned workmen were the employees under the respondent company announced lock-out from 12-8-2006 as ordered by the Pollution Control Committee based on a report published in the newspaper that four children had fainted in the vicinity of the respondent's unit and the respondent laid off 45 workers working in their industry and the order of closure was challenged by the respondent in Writ Petition No. 18483 of 2007 before the Hon'ble High Court, Madras and by an *interim* order, dated 26-6-2007, the industrial unit of the respondent company was allowed to commence its operations and the Regional Director, NEERI, Chennai was asked to inspect the unit and submit a report about the status of air pollution impact from the respondent unit and based on the report of NEERI, Chennai, the Hon'ble High Court, Madras has passed an order, setting aside the closure order passed by the Member-Secretary, Department of Science, Technology and Control Committee, Puducherry. Ex.R1 is the said order passed by the Hon'ble High Court, Madras. It is also an admitted fact that the petitioner union filed an application in M.P. No. 3/2007 in the above writ petition to get itself impleaded as third respondent and the Hon'ble High Court passed an order on 26-9-2007, allowing the said petition and recorded the submission of the senior counsel appearing for the respondent company that–

> "Due to the closure of the unit, the employees could not be given any work during last one year before that date and as the closure order had been set aside, the company would recommence its operations and provide employment to the workers and they would be called in for work in batches."

Ex.R2 is the copy of the order passed by the Hon'ble High Court, Madras, allowing the impleading petition filed by the petitioner union.

9. As per the orders of the Hon'ble High Court, Madras, dated 26-9-2007 in W.P. No. 18483/2007, it is open to the respondent to provide employment to the workers by calling them for work in batches. In this regard, the learned counsel for the petitioner has submitted that after recommencement of the operations, the respondent called ten workmen only on 26-10-2007, whereas even before recalling the said ten workmen, the management started production by engaging new labour instead of recalling the laid off workmen as undertaken before the Hon'ble High Court and hence the petitioner gave representations repeatedly to the management for the reemployment of all the 45 laid off workmen and since the respondent failed to reemploy all the laid off workers, the dispute was referred to the Labour Officer by representation, dated 12-8-2006.

10. On the other hand, the learned counsel for the respondent has submitted that after taking note of prevailing circumstances and administrative exigencies, the respondent management has offered work to ten employees and the individual call letters were sent to them asking them to report for duty on 1-11-2007.

11. When the respondent gave undertaking to the Hon'ble High Court that they will provide employment to the lay off workmen in batches, as soon as the company recommences its operations, it is the duty of the respondent to provide employment to the remaining workmen also. But the respondent in his letter to the Conciliation Officer, dated 10-12-2007 under Ex.R5 have stated as follows:-

> "We would like to point out at this juncture that the union has raised the dispute only in respect of the workmen, who are their members. But there are seven other workmen by name Prathab Naik, Rajkumar Raj, Dhirendrakumar, Akaikumar, Arivazhagan, Niranjan and Parvathi in respect of whom dispute was not raised by the union and who were also employed by the management even prior to the closure of the industry by the order of the Pondicherry Pollution Control Committee. The above persons are seniors to the other workmen who are members of the union. In addition to them, the factory had employed some contract workmen even prior to the closure of the industry and they were employed for pulverising, cleaning thermax and filter press operations and the very same persons supplied by the contractors are continuing their work, after reopening of the factory. There is nothing wrong in employing the said seven persons as well as the contract workers and the petitioner union cannot have any legal grievance in this regard."

The contention of the respondent before the Labour Officer that certain persons who were also employed by the management prior to the closure and who are seniors to workmen affiliated to the union, cannot be accepted, as no evidence has been placed by the respondent regarding the muster roll of the persons employed after restarting the factory. Further the respondent admits about the employment of persons supplied by the contractors in Ex.R5, which is total violation of the undertaking given before the Hon'ble High Court. While the respondent has engaged and placed nine workmen, who were reemployed in positions other than those in which they were employed before the closure, the respondent could have employed the non-employed workmen in the place of the contract workers even if the nature of the work were different.

12. In Ex.R5 the respondent has stated to the Conciliation Officer that as against three filter press machines employed earlier (at the time of the closure industry) at present there is only one filter press machine employed on account of the fact that the other two machines have been disposed for scrap value as they cannot be employed for any further for the normal production activities and hence the production has been reduced. In this regard, the learned counsel for the petitioner has submitted that though the respondent claims that the production has been reduced due to the scrapping of the two filter press machines, the entire process of production still remains the same and at least 15 workmen per shift is required to operate all the machineries. This aspect of learned counsel for the petitioner has not been denied by the respondent either in the counter or in their evidence. Hence, there could not be any production unless the respondent has engaged new hands denying employment to the workmen under reference. In the above circumstances, the non-employment of 34 persons under reference is unjustified. The learned counsel for the respondent has contended that the respondent cannot be found fault with for the non-employment of the workmen, which was on account of the order of the closure of the industry by the Government for no fault of the respondent. Of course the said contention may be true, but as per the undertaking given by the respondent to the Hon'ble High Court, it is bound and duty of the respondent to provide reemployment to the petition mentioned workmen. Hence, the petition mentioned workmen are entitled for reinstatement with continuity of service and with full back wages and other attendant benefits. There is no dispute that the salary from August 2006, the month on which the lock-out was declared by the respondent, has not been given to the petition mentioned workmen. Hence, the petition mentioned workmen are entitled for full back wages from August 2006.

13. The learned counsel for the petitioner prayed this court to direct the respondent for compensation to the non-employed workmen for the period of closure. But this present industrial dispute has been referred to this court only to adjudicate whether the non-employment of 34 workmen is justified or not, for which this court has already come to the conclusion that it is unjustified. Hence, this court cannot pass any order in respect of compensation to the period of closure, as there is no reference in this regard. Accordingly, this point is answered.

13. In the result, the industrial dispute is allowed and the petition mentioned workmen are entitled for reinstatement with continuity of service and with full back wages and other attendant benefits. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on the 19th day of February 2013.

T. MOHANDASS,
Presiding Officer,
Labour Court, Puducherry.

List of petitioner's witnesses :

PW.1 — 8-9-2011 — Chinnappa, President of petitioner union.

List of petitioner's exhibits : Nil.

List of respondent's witnesses:

RW.1 — 6-12-2012 — Sathiswaran, Manager of respondent company.

List of respondent's exhibits:

Ex.R1 — Copy of the order in W.P. No. 18483/2007 of Hon'ble High Court, Madras, dated 26-9-2007.

Ex.R2 — Copy of the order, dated 26-9-2007 in M. P. No. 3/2007 of Hon'ble High Court, Madras.

Ex.R3 — Copy of the representation, dated 10-7-2007 by respondent to Labour Officer.

Ex.R4 — Copy of the reply, dated 26-7-2007 by respondent to the Labour Officer.

Ex.R5 — Copy of the letter, dated 10-12-2007 sent by the respondent to the Labour Officer.

Ex.R6 — Copy of the letter, dated 27-2-2008 sent by the respondent to the Labour Officer.

Ex.R7 — Copy of the representation, dated 9-9-2008 sent by respondent to the Labour Officer.

Ex.R8 — Copy of failure report, dated 12-12-2012

Ex.R9 — Copy of letter, dated 2-3-2009 sent by Labour Officer to the respondent.

Ex.R10 — Copy of list of all employees sent by the respondent to the Labour Officer.

Ex.R11 — Copy of list of 17 employees who were offered reemployment sent to the Labour Officer.

Ex.R12 — Copy of order, dated 5-7-2012 in Appeal No. 2/2012 by the appellate authority.

Ex.R13 — Copy of the order, dated 16-11-2011 passed by Puducherry Pollution Control Committee.

T. Mohandass,
Presiding Officer,
Labour Court, Puducherry.

GOVERNMENT OF PUDUCHERRY

GENERAL ADMINISTRATION (INFORMATION AND PUBLICITY) DEPARTMENT

(G.O. Ms. No. 2, dated 15th May 2013)

NOTIFICATION

As per section 11A of the Press and Registration of Books Act, 1867, all the publishers/printers of the newspapers/periodicals are required to submit two copies of their publications regularly at free of cost to the officers prescribed by the notification issued by the Government. While submitting their newspapers/ periodicals, it is required to submit their RNI Certificate in the first instance in order to maintain a full record of the newspapers/periodicals published in the Union territory of Puducherry. After submitting the copies of the newspapers/periodicals of their publications in duplicate, they can get an acknowledgment from the nominated officer.

2. If the newspapers/periodicals have not submitted their editions/publications successively as indicated below to the nominated officer, then it is treated that they have discontinued their editions/publications and the advertisements/facilities/benefits extended by the Information and Publicity Department in respect of those defaulted media shall be withdrawn without any notice:

(a) Dailies . . 7 issues successively
(b) Weeklies . . 4 issues successively
(c) Fortnightlies . . 3 issues successively
(d) Monthlies . . 2 issues successively

3. The following officers are nominated to receive the published copies of the newspapers/periodicals as required under the abovesaid Act:-

Sl. No.	Name of the officer nominated	Area of coverage
(1)	(2)	(3)
1	The Director of Information and Publicity.	Entire Union territory of Puducherry.
2	The District Collector, Puducherry	Puducherry district.
3	The District Collector, Karaikal	Karaikal district.
4	The Regional Administrator, Mahe	Mahe
5	The Regional Administrator, Yanam	Yanam

(By order of the Lieutenant-Governor)

Giddi Mruthyunjaya Durga Rao,
Under Secretary to Government
(Information and Publicity).

GOVERNMENT OF PUDUCHERRY

OFFICE OF THE CHIEF EDUCATIONAL OFFICER

No. 3818/CEO/KKL/E3(Exam.)/2012.

Karaikal, the 20th May 2013.

NOTIFICATION–I

It is hereby notified that the original H.S.C. Mark Certificate, under Register Number 600131 bearing Serial Number HSG 6921570 of March 2012 session in respect of K. Sivasankar, an ex-pupil of Government Higher Secondary School, T.R. Pattinam, Karaikal is reported to have been lost and beyond the scope of recovery and it is proposed to issue a duplicate certificate. If the original certificate is to be found by anybody, it should be sent to the Director of Government Examinations, Chennai-6 for cancellation, as it is no longer valid.

Chief Educational Officer i/c.

NOTIFICATION–II

It is hereby notified that the original H.S.C. Mark Certificate, under Register Number 760438 bearing Serial Number 1199321of March 2001 session in respect of J. Muthukrishnan, an ex-pupil of Thanthai Periyar Government Higher Secondary School, Kovilpathu, Karaikal is reported to have been lost and beyond the scope of recovery and it is proposed to issue a